

PRINCIPLES SUGGESTED FOR ADOPTION
IN THE PREPARATION OF A
UNIFORM WATER ACT

Presented in the form of a progress report by the
committee appointed pursuant to Resolution No. 13,
adopted by the National Reclamation Association
at the 11th Annual Meeting, October 14-16, 1942,
Denver, Colorado.

Wells A. Hutchins, Division of Irrigation,
Soil Conservation Service, U. S. Department
of Agriculture, Berkeley, California,
Chairman

Don McBride, Oklahoma Planning and Resources
Board, Oklahoma City, Oklahoma

A. W. McHendrie, Attorney, Pueblo, Colorado

Fred E. Buck, State Engineer, Chief Engineer
and Member of Montana State Water Conservation
Board, Helena, Montana

September 15, 1943

UNITED STATES
DEPARTMENT OF AGRICULTURE
Soil Conservation Service
Division of Irrigation

Box 180, Berkeley, California
September 15, 1943

Mr. F. O. Hagie, Secretary-Manager
National Reclamation Association
1119 National Press Building
Washington, D. C.

Dear Mr. Hagie:

Herewith is the draft of a report prepared by the committee appointed pursuant to Resolution No. 13, National Reclamation Association, at the Denver 1942 meeting. The committee so appointed consisted of Fred E. Buck, Don McBride, A. W. McHendrie, William E. Welsh, and Wells A. Hutchins, chairman. Mr. Welsh was unable to participate in the committee's deliberations and prefers that the matter be handled as though he had not been appointed.

This report states the principles that the committee believes should be incorporated in a uniform water law. The committee feels definitely that its function will be best served by stating principles, rather than by drafting a legislative act, for two reasons: (1) The differences, from State to State, in constitutional provisions and in legislative and court practice and procedure are so considerable, that a statement of principles that can be translated into legislation within a State would be more generally useful than a uniform legislative act; and (2) as a practical matter, the drafting of a legislative act would require a very long time.

The committee therefore presents its findings in the form of a progress report, with the following recommendations: (1) That the report be accepted by the directors for the consideration of the Association; (2) that the report be mimeographed and copies transmitted to all officers and directors of the Association, to the members of the legislative and resolutions committees from each State, to each of the Western State Engineers, and to any other members of the Association who would be directly interested, inviting their comments; and (3) that the comments be referred back to this committee, or to another committee appointed in its place, preparatory to the making of a final report, such final report to be made to the Association during the ensuing year.

Very truly yours,

(Sgd) Wells A. Hutchins

Wells A. Hutchins, Chairman
FOR THE COMMITTEE

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I. Introductory Provisions

1. Definitions of terms. (a) Water supply is a natural body of water, either on or under the surface of the ground, available for diversion to beneficial use.

(b) Common water supply is a combination of water supplies, on or under the surface, or both, which are so interconnected that diversions from one component water supply result in reducing the quantities of water that otherwise would be available in other component water supplies.

(c) Watercourse is a definite natural stream of water in a definite natural channel, originating from a definite source or sources of supply. The stream may flow intermittently or at irregular intervals, if that is a characteristic result of the sources of supply in the area.

(d) Diffused surface water is water that occurs, in its natural state, in places on the surface other than in a watercourse or lake or pond.

(e) Ground water is water under the surface, whatever may be the geologic structure in which it is standing or moving.

(f) Foreign water is water that has been diverted from a water supply within one watershed and transported into a different watershed.

(g) Consumptive use is such use of water in building plant or animal tissues, transpiration through such tissues, evaporation, or other processes that result in actually consuming the water or in rendering it unavailable for further use in the locality.

(h) Return water or return flow is the portion of water diverted from a water supply in excess of the consumptive use. Return water from irrigation is the portion diverted in excess of consumptive use that escapes from works for the conveyance or distribution of irrigation water or from the surface or root-feeding zones of the soil to which it has been applied. In the usual case, return water augments a water supply on or under the surface.

(i) Salvaged water is that portion of water in a water supply which under natural conditions is lost, but which is recovered and made available for use by means of artificial works.

(j) Developed water is water that in its natural state does not augment a water supply, but that is added to a water supply or is otherwise made available for use by means of artificial works.

(k) Water right is a right to the use of water, accorded by law.

(l) Appropriative right is the exclusive right, acquired under the procedure provided by law, to divert from a water supply a specific quantity of public water, provided it is available there in excess of the requirements of all earlier appropriative rights, and to apply such water to a specific beneficial use or uses.

(m) Appropriation is the process or series of operations by which an appropriative right is acquired. A completed appropriation thus results in an appropriative right; the holder of an uncompleted appropriation in good standing has an inchoate water right. The water to which either a completed or an uncompleted appropriation in good standing relates, is appropriated water.

(n) Permit is the specific authorization to make an appropriation of water which is issued by the State Engineer to one whose application for a permit has been approved. Certificate of appropriation is the certification by the State Engineer that the holder of a permit has completed his appropriation. Certificate of adjudication is the certification by the State Engineer that the water right of the holder has been adjudicated by court decree.

(o) Appropriator is one who appropriates water. An appropriator may be, at a given time, an applicant for a permit, or a holder of a permit, or a holder of a certificate of appropriation, provided the particular document is then in legal effect. A primary appropriator is one who initiates an appropriation that is consummated, in part, as the result of the acts of others -- who are termed secondary appropriators -- in putting the water to beneficial use under the terms of the appropriation; the formal title to the right in such case being carried on the public records in the name of the primary appropriator.

(p) Priority of an appropriative right, which is governed by the time as of which the right accrues, is the superiority of the right over all later appropriative rights that attach to the same water supply when the aggregate quantities of water available are not sufficient to satisfy the aggregate rights which attach to such water supply. The date of priority is the date as of which the right accrues, which under the act is the date of filing the application for a permit to appropriate water provided all requirements of the act are fully complied with. A schedule of priorities is the list of appropriative rights which attach to a water supply, arranged in chronological sequence according to the respective dates of their accrual.

(q) Domestic use is the use of water by an individual, or by a family unit or household, for drinking, washing, culinary purposes, irrigation of a family garden and/or orchard not greater in area than one-half acre, and the watering of animals used in operating a farm or as food for the farm family. Domestic use does not include the watering of flocks, herds, or bands of livestock connected with livestock or dairy enterprises; such a purpose of use is a stock-watering purpose.

(r) Municipality is an incorporated city, town, or village.

(s) Municipal use is the use of water within a municipality, whether supplied by the municipal government or by a privately-owned public utility or other agency, primarily to promote the life, safety, health, comfort, and business pursuits of the inhabitants. It specifically includes the use of water for fighting fires, flushing sewers, sprinkling streets, watering parks and parkways, and small quantities of water for recreational purposes such as swimming pools; the use of water in public and private buildings, industrial enterprises, and homes; and the irrigation of lawns and gardens. It does not include the irrigation of crops on a commercial scale, even within the limits of the municipality; such use of water is for an irrigation purpose. Nor does it include large recreational uses such as lakes; such use of water is for a recreational purpose.

(t) Public Utilities Commission is the State board or commission charged by law with the regulation of the rates and services of public utilities.

(u) Well is an artificial excavation or opening into the ground, made by means of digging, boring, drilling, jetting, or driving, or by any other artificial method, for the purpose of obtaining ground water. Well driller is any person or group of persons who drill or otherwise install a well or wells, for compensation or otherwise, upon the land of the well driller or upon other land.

2. Purpose of act. The purpose of the act is to make possible, insofar as valid legislation and capable administration may do so, the best utilization of the public water supplies of the State. The intention of the legislature is that the provisions of the act shall be liberally construed to that end.

3. Exercise of police power. The legislature, in the exercise of the police power of the State, provides in the act for the future acquisition of all rights to the use of water, for the determination and adjudication of all water rights, and for the administration of water rights and the distribution of water from public water supplies.

4. Existing rights preserved. Nothing in the act is intended to impair the validity of any existing water right or to interfere with its proper utilization; but the exercise of all such rights is subject to the provisions of the act.

5. Ownership of water. All waters in their natural environment within the State, whether above or under the surface of the ground, are the property of the public, subject to existing rights to their use.

(a) Private ownership does not exist in the corpus of water before the water has been diverted from a public water supply or otherwise brought under private control and possession under a valid right of use, or water right.

(b) It is unlawful to divert or to use water from a public water supply otherwise than in the exercise of a water right, inchoate or completed.

(c) Private ownership does not exist in water that has been reduced to private control and possession unlawfully, or in excess of the quantity of water which the holder of a water right is entitled to divert or to control under the terms of his right.

(d) Water lawfully reduced to private control and possession by physical means, under the terms and conditions of a water right, becomes and remains the private property of the holder of the water right, subject to the lawful exercise of the right.

(1) This is the case, regardless of the method by which the water is physically controlled, provided that such method or control is suitable to the exercise of the water right and is covered by its terms.

(2) Such water does not lose its character as the private property of the water-right holder by reason of its being stored in a reservoir located in the watercourse to which the water right attaches or in any other natural channel or elsewhere, or stored in the ground (see section 29), or conveyed in any natural surface channel (see section 31) or in any underground stratum (see section 29); and the water right is not subject to abandonment or forfeiture solely by

reason of any such control in the proper exercise of a water right (see sections 50 and 51).

(e) Private ownership in any quantity of water lawfully reduced to private possession ceases if such quantity of water is not used, or is not required for use, under the conditions which govern the exercise of the water right (see section 26).

(1) Such water again becomes the property of the public.

6. Public use. The use of water under an appropriative right, and the right of way for the conveyance of water over public lands of the State and private lands and for the storage of water thereon, are public uses.

7. State Engineer. A State Engineer, whose qualifications include engineering training and practical experience in the handling of water problems, is provided for.

(a) The State Engineer is vested by the act with supervision over those administrative functions of the State that relate to the control of public water supplies and to the utilization of the waters thereof, the exercise of which is provided for in the act.

(b) The State Engineer is responsible for the proper performance of all of the functions of the State that are provided for in the act.

(1) Subject to this responsibility, the performance of any particular function that is vested by the act directly in the State Engineer may be delegated to a member of the organization of which he is the chief.

(2) Functions that are vested by the act directly in water officials or officers within the organization headed by the State Engineer, are nevertheless performed by such officials or officers under the general direction and supervision of the State Engineer, and it is his responsibility to see that they are properly performed.

(c) The State Engineer is granted, in the act, wide discretion in the performance of his functions.

(1) His exercise of discretion in any particular case, if not inconsistent with the purpose of the act and if not arbitrary or unreasonable, must be accorded great weight by the courts.

(2) While some such functions provided in the act may appear to partake of a judicial nature, the legislature deems them all to be essentially administrative.

(3) Nothing in the act is to be construed as an intent to vest any essentially judicial function in an administrative agency of the State.

(d) The organization headed by the State Engineer includes subordinates capable of performing the engineering, investigational, clerical, and other work required in administering the provisions of the act.

(e) The Attorney General is the legal adviser of the State Engineer, but the State Engineer may employ other legal counsel regularly or may engage their services temporarily.

(1) Suit to enforce any of the provisions of the act may be prosecuted, either in the name of the State by the Attorney General, upon request of the State Engineer, or by the State Engineer under his official title, represented by other counsel.

(2) In any action brought against any member of the organization headed by the State Engineer, to restrain the performance of such member's official duties, the State Engineer must be joined as defendant.

(f) The State Engineer may make all investigations and studies that are required for the proper performance of his functions.

(1) He or any member of the organization which he heads may enter upon either public lands of the State or private land for any proper purpose involved in the administration of the act, but without doing any unnecessary damage to the land or to other property.

(g) The State Engineer must make rules and regulations governing the exercise of the functions of his office, including, among other things, the following general subjects:

(1) Appropriation of water.

(2) Installation of wells and licensing of well drillers.

(3) Determination of water rights.

(4) Administration of water rights.

(h) The State Engineer must have the rules and regulations printed in pamphlet form, and must supply copies without charge to all those affected by the act who request copies.

(1) A single pamphlet may contain all rules and regulations, or only those relating to one or more general subjects, in his discretion.

(i) The State Engineer must also provide for the printing of detailed instructions concerning the procedure for the appropriation of water, including the necessary information to be included in or to accompany an application for a permit to make an appropriation, and must furnish such instructions without charge to all intending appropriators, upon request.

(1) Such instructions may be included with the rules and regulations for the appropriation of water, or may be printed separately, in his discretion.

(j) The State Engineer may require the making of annual reports, or such other reports as are reasonably needed in administering the act, and in such form as he deems necessary, from holders of completed or uncompleted appropriative rights, holders or claimants of water rights other than appropriative, well drillers, and any others who may be engaged in exercising any of the rights or privileges accorded by the act, the proper performance of which is necessary to the maintenance of their good standing.

8. Proceedings. It is the intention and mandate of the legislature that all administrative and judicial proceedings that are contemplated by the act be conducted expeditiously, without unnecessary expense, and with substantial justice to all concerned, and that informalities in their conduct shall not render the proceedings invalid so long as the rights of the parties and of the public are properly safeguarded.

(a) The act will provide, at appropriate places, procedure adequate for the accomplishment of these purposes.

9. Notice of administrative matters. In any administrative matter of which the act requires the giving of notice, whether in connection with a hearing or otherwise, such notice, unless otherwise provided for, must be given by publication and by mailing to all parties known or believed to be interested, and whose rights are or might be affected by the taking of such action.

(a) If notice is given of any proposal that the State Engineer take action, in connection with which interested parties are authorized to protest, the notice must --

(1) Provide a reasonable time within which protests may be deposited in the office of the State Engineer;

(2) Set a date upon which a hearing will be held in the event that any protest from an interested party is received within the time allowed; and

(3) Set a date upon which action will be taken in the event that no protest is received within such time.

(b) The act will state whether the notice must be given by the State Engineer, or by some party at his direction.

(c) In some cases the act will require the State Engineer to give notice of the fact that some final determination has been made or some other final action taken, in which case the notice is for the purpose of such information only.

10. Hearings by State Engineer. Hearings by the State Engineer upon administrative matters are provided at appropriate places in the act.

(a) A hearing must be held by the State Engineer in any case in which, if authorized by the act, he orders a party to show cause why some action should not be taken, stating his reasons therefor; and also in any case in which some interested party, if authorized by the act to do so, petitions the State Engineer to take some action or protests against his taking some action.

(b) Whether or not a hearing, in any particular case, is made a condition precedent to the action of the State Engineer upon a proposal, he is authorized to hold a hearing if in his judgment it appears that the rights of others or of the public may be injuriously affected by his action.

(1) If in any such case protests are not specifically provided for, the State Engineer must consider the need for such a hearing if any party in good faith makes a prima facie showing that his rights or those of the public are in danger of being impaired.

(c) Wherever hearings are authorized at any place in the act, adequate procedure will be provided for their conduct in order to accomplish their purpose effectively and to insure their validity.

(1) The procedure will include the giving of notice to all whose rights may be affected or who are known to have a real interest in the proceedings, as provided in section 9.

(2) At any hearing, any interested party may appear and must be heard, whether or not he has been personally served with notice or has filed a protest.

(3) All interested parties, provided they appear and conduct themselves in good faith, must be accorded full opportunity to assert their own rights, to contest the asserted rights and claims of others on any valid ground, and to request or object to the taking of a particular action by the State Engineer which is involved in the proceedings, and may introduce evidence in support of their contentions.

(4) Provision will be made for the issuance of subpoenas in order to compel the attendance of witnesses, and for the taking of testimony, as in case of judicial proceedings in order that all matters pertinent to the determination may be properly brought before the State Engineer; but only those formalities that are specifically required by the act, or that otherwise are necessary to insure an equitable determination, need be observed in the conduct of any such administrative proceeding.

(5) Authorization to adjourn proceedings from time to time for any necessary purpose, including the making of personal inspection of the premises involved, will be included.

(d) The decision of the State Engineer upon any hearing is subject to judicial review.

11. Recourse to courts. Nothing in the act is to be so construed as to deprive any person of recourse to the courts for protection against invasion of his rights.

(a) Judicial review of administrative proceedings and hearings, and of decisions, orders, or other official acts of the State Engineer or of others charged with responsibility for carrying out the provisions of the act, will be provided for at an appropriate place or places in the act, and will include adequate procedure.

(1) This review will be held in a designated trial court, with provision for the right of appeal.

(2) The State Engineer must be joined as defendant in any action brought to review any decision rendered by him or by a member of the water organization which he heads, but no judgment for costs or expenses of the litigation may be rendered against him or against any other member of the organization.

(3) Service of process against the State Engineer will operate to stay all further proceedings pending the decision of the court.

(4) The procedure for judicial review so provided in any particular case is to be the exclusive method of seeking redress in the courts in such case.

(b) If an appeal to one administrative official from the action of another official is authorized in the act, such remedy must be first pursued before resorting to the courts for relief.

(c) The act provides that any person who asks for a temporary restraining order against the State Engineer or any other official charged with the administration of any of the provisions of the act, such order to be effective during all or any part of the time during which the action is pending, must post a heavy bond; and no court must issue a temporary restraining order in any such action until the bond has been posted.

(1) If the complainant fails to show that the State Engineer or other such official has violated the law in performing the act or acts complained of, the bond is to be forfeited.

(2) The amount or amounts of the bond or bonds will be fixed by the act for cases in which violations other than the wrongful delivery of water are alleged, or will be left to the court, as the legislature may decide.

(3) For cases in which the unlawful delivery of water to an appropriator by an administrative official, or proposed unlawful delivery, is alleged by another appropriator, the act will fix the amount of the bond in such sum or sums, depending upon the extent of the appropriative rights held by the complainant and by those who would be adversely affected by the temporary restraining order, as will be calculated to discourage an appropriator from attempting to obtain the use of water that properly belongs to another appropriator, during the time the temporary order is in effect, when the complainant is not acting in good faith or has not made every reasonable effort to ascertain the relative status of the rights in question. If in such case the complainant fails to show that he is rightfully entitled to the use of such water during the time the restraining order is in effect, or if he allows the action to lapse before the final decision has been rendered, the bond is to be forfeited. In case the bond is forfeited, the court must ascertain the damages suffered by any party or parties by reason of their deprivation of the use of water to which they were rightfully entitled, so far as it was occasioned by the operation of the restraining order. If the bond is not sufficient to cover all such damages, the court must assess the additional amount or amounts against the party who obtained the temporary restraining order.

12. Costs. The act provides for the allocation of the costs of all administrative and judicial proceedings.

13. Fees. The act provides for a schedule of fees that must accompany the receipt of documents, charts, maps, reports, protests, and other papers deposited in the office of the State Engineer, and fees for obtaining from the State Engineer certified copies of the records of his office.

(a) The payment of fees is not required in the case of appropriations of water made by agencies of the United States or of the State.

(b) Provision is made for the crediting of all fees so collected to the proper fund available for the administration of the State Engineer's office.

(c) The payment of every fee or other charge prescribed by the act is a condition precedent to the exercise of any right in connection with which the payment of the fee or other charge is required.

14. Penalties. The act provides penalties for the violation of its provisions.

15. Repeal of conflicting legislation. The act provides for the repeal of all acts or parts of acts in conflict therewith.

16. Severance clause. A severance clause is included, in order to save the validity of the remaining portions of the act in case some portion is declared unconstitutional.

II. Appropriation of Water

A. Waters

17. Waters subject to appropriation. All waters to which water rights have not attached, or are not in process of being attached, are unappropriated waters; and all unappropriated waters, except ground waters that cannot be diverted from the ground-water supply with a reasonable and economically feasible pumping lift (see section 26, subsection (f), and section 74, subsection (d)), are subject to appropriation.

18. Appropriation of foreign water. An appropriation may be made of water from a water supply within one watershed, for conveyance to and use within a different watershed, provided that both the rights of existing users in the original watershed and also the public interest are safeguarded.

(a) The State Engineer, before granting a permit to make such an appropriation, must consider the question of reasonably prospective uses of the water within the original watershed, for which appropriations have not at such time been initiated, and the probable effect upon the public welfare of precluding such prospective uses in favor of the proposed use in a different watershed.

(b) The State Engineer must deny the application, in whole or in part, if he finds --

(1) That the rights of existing appropriators in the original watershed will be impaired by diverting out of the watershed all or part of the quantity of water applied for; or

(2) That the public interest would be better served by reserving all or a portion of such water for future appropriation and use within the original watershed.

19. Rights of use and reuse of return water. An appropriator may recapture and reuse the return flow that results from the exercise of his water right, or a primary appropriator may provide for its reuse or for its recapture and reuse by secondary appropriators, under the following circumstances and subject to the following conditions:

(a) Return water may be reused within the tract or project in connection with which the appropriation of the original flow is made, whether or not this reuse is mentioned in the application for a permit to appropriate the original flow.

(b) Return water may be reused on or in connection with lands outside the tract or project in connection with which the appropriation of original flow is made, but only if first provided for in the application for a permit to make the appropriation of the original flow, or in an amendment thereto.

(1) If provided for in an amendment, the right of reuse does not extend to any quantity of return flow that has been allowed to augment a water supply prior to the receipt of the amendment in the State Engineer's office.

(2) Any such quantity of return flow that has been so allowed to augment a water supply, becomes a part of such water supply to the same extent as though it had originated from natural sources.

(3) The original application or the amendment may specify that the return water is to be reused on or within a maximum acreage of additional lands in a generally described locality, instead of describing such additional lands particularly, and exact plans for recapture and reuse may be made subsequently.

(4) Proof of reuse of the return water is required, as in case of use of the original flow.

(c) The return water, in either of the cases stated in subsections (a) and (b) herein, may be intercepted either within or outside the tract or project on which it arises, whether or not it would flow into a water supply if not so intercepted; or it may be allowed to enter a water supply, and may be diverted therefrom at a downstream point or points; or it may be allowed to enter a water supply, and to flow downstream to supply other appropriators

in exchange for an equivalent quantity of water (adjusted for stream gains and losses) diverted at an upstream point or points.

(1) Whether the water supply that the return water enters, or would enter if not intercepted, is the same water supply from which the original flow was diverted, or is a different one, does not affect this right of interception or redirection.

(d) Return water in the above cases may be allowed to augment a water supply during the period of its accumulation, and may be subsequently recovered, notwithstanding its use during such time by other appropriators, provided the original appropriator exercises reasonable diligence in identifying the return flow and perfects his right of reuse as herein provided.

(1) The burden of proving the existence, location, and quantity of return flow, and the exercise of reasonable diligence in identifying it after its appearance in substantial quantities, is upon the original appropriator.

(2) If this right of recovery and reuse of return water by the appropriator of the original flow is perfected as herein provided, and if the right is not abandoned or forfeited because of subsequent nonuse of the water, no claim by any other appropriator is superior to such right.

(e) In order to perfect his right to intercept or to divert return water, if the water has been allowed to augment a water supply prior to the construction of works to effectuate its reuse, the appropriator must first make application to the State Engineer for a permit to make the proposed interception or diversion.

(1) The application must be received in the office of the State Engineer within five (5) years after the appearance of the return flow in the water supply in quantities capable of reasonable identification.

(2) The application must set forth, among other things that may be required by the State Engineer in his printed rules and regulations, the quantity of return water identified; the location or locations in which it is known or believed to be entering the water supply; the portion of the identified return water proposed to be intercepted or diverted; the proposed point or points of interception, diversion, or exchange and diversion; and whether the reuse is proposed to be made on the original tract or project or on additional lands indicated in the application for a permit to make the original appropriation, and in the latter case, the particular lands on which the water is to be used.

(3) Before granting the permit, the State Engineer must give notice of the receipt of the application, and must hold a hearing if any protests are received within the time allowed, in the manner provided in sections 9 and 10; and he must find that the allegations in the application have been substantiated by satisfactory proof, that the proposal is consistent with the terms of the appropriation of the original flow, that all requirements of the act and of his rules and regulations have been complied with, and that the rights of other appropriators will not be otherwise impaired.

(4) The permit must fix the dates by which the proposed work must be commenced and completed, the return water put to use, and proof of the performance of the several acts made. A reasonable time must be allowed in each instance. Extensions of time may be granted upon good cause shown.

(5) As the return flow increases in substantial quantities with the development of the project, the appropriator may apply, from time to time, under the above provisions, for additional permits covering the interception or diversion of additional quantities of return water.

(6) All proceedings provided for in this section must be carried out in the name of the original appropriator, or of his successor as shown by the records of the State Engineer, regardless of any agreement between a primary appropriator and secondary appropriators under which the latter are to make the proposed interceptions or diversions and/or the proposed use.

(f) Return water, unless rights of use are perfected as above provided, becomes a part of the water supply which it augments or which it would augment if not intercepted, to the same extent as any increment of water that results wholly from natural causes.

(1) In such case, the return water inures to the benefit of existing appropriators whose rights attach to the water supply, or is subject to further appropriation, as the case may be, and is not subject to appropriation as a new or independent water supply.

(g) The provisions of this section apply to the reuse of return flow from foreign water, as well as to return flow from water used within the watershed in which it is originally diverted.

(1) The right of an appropriator of foreign water to the use of the return flow therefrom is no greater, and no less, by reason of the fact that the original flow has been appropriated and diverted within one watershed and that the return flow has resulted from the use of the water in another watershed.

20. Rights of use of salvaged water and developed water. The one who is responsible for the artificial work that results in the existence and appearance of salvaged water or of developed water, has the exclusive right to the use of such water, provided that within two (2) years after its appearance in quantities capable of reasonable identification, he makes an application for a permit to appropriate such water, and completes his proposed appropriation in due course.

(a) The application must specify the nature, source, and quantity of the salvaged water or developed water, and the applicant's responsibility for its existence and appearance as such.

(1) The burden of proof of all matters alleged in the application is upon the applicant.

(b) The appropriation must be perfected under the procedure for the appropriation of water provided in the act.

(1) The applicant must have the qualifications of an appropriator required by the act. (See sections 38 and 39.)

(2) All requirements of the act that govern the procedure for appropriating water, including diligence in the prosecution of the work, rejection of the application, cancelation of the permit, and postponement of the date of priority, apply with equal force to an appropriation of salvaged water or developed water.

(c) If the appropriation is perfected with a date of priority not later than two (2) years after the appearance of the water as above provided, and if the appropriative right is not abandoned or forfeited because of subsequent nonuse of the water, such right to the use of salvaged water or of developed water in the one responsible for its existence as such, is superior to the claim of any other appropriator who claims the right to use such water.

(d) If in the course of making the appropriation, the date of priority is postponed, as provided in sections 66, 77, and 79, beyond the expiration of the two-year period, the salvaged water or developed water then becomes a part of the water supply which it augments, or the developed water, if it does not augment a water supply, becomes a new water supply.

(1) In any such case, the priority of the appropriation is junior to those of all appropriations of earlier date that have attached to such water supply.

(e) Upon the expiration of the two-year period above provided, if an application for a permit to appropriate the salvaged water or developed water has not been received from the one who is responsible for its existence and appearance as such, --

(1) Salvaged water or developed water that appears in and augments a water supply, becomes a part of the water supply which it augments, to the same extent as though its appearance had resulted from natural causes; and it is not subject to appropriation as an independent or new water supply.

(2) Developed water that does not augment a water supply, becomes a new water supply of unappropriated water, subject to appropriation.

21. Installation of wells in appropriating ground water. After the act goes into effect, no well may be drilled or otherwise installed for the purpose of effectuating or exercising an appropriation of ground water, other than under the terms of a license issued by the State Engineer; and no appropriation of ground water which involves a diversion by means of a well or wells, installed after the act goes into effect, shall be deemed to be valid unless the installation is made under the terms of such license.

(a) The State Engineer, in his rules and regulations for the installation of wells and licensing of well drillers (see section 7, subsection (g)), may provide general specifications for wells and pumping plants which are to be used in diverting ground water under appropriative rights, and requirements concerning their installation.

(b) Application for a license to install a well or wells must be made on a form to be provided by the State Engineer.

(1) An annual license must be obtained by one who engages in the occupation of drilling or otherwise installing wells, and it must be renewed from year to year.

(2) A temporary license to install one or more wells may be issued to the holder of a permit to appropriate ground water, or to one engaged by him for such purpose and who does not hold an annual license. A temporary license applies to only the one appropriation of ground water.

(3) No license, whether annual or temporary, may be issued unless the applicant possesses the qualifications of a well driller, including financial ability, prescribed by the State Engineer in his rules and regulations for the installation of wells and licensing of well drillers.

(4) No license to install a well or wells is transferable.

(c) A bond must be deposited with the State Engineer, in such amount as he may prescribe for an annual license or temporary license in his rules and regulations, before a license to install a well may be issued.

(d) A license may be revoked if the holder fails to comply with the State Engineer's rules and regulations, or with the terms and conditions of the license, or with the terms and conditions of the permit to appropriate ground water.

(1) If the State Engineer believes that the holder has failed to make such compliance, he must order the latter to show cause why the license should not be revoked, stating his reasons therefor, or he may do so upon the petition of any interested party, as provided in section 10.

(2) Hearing must be held as provided in section 10; and if the State Engineer finds that the holder has failed to make proper compliance, he must revoke the license.

(e) The State Engineer may require such reports regarding the installation of wells as he deems necessary.

(1) Failure to make reports promptly and in proper form, without adequate excuse, is ground for revoking the license.

(f) The installation of wells in connection with an appropriation of ground water must proceed in all respects in compliance with the provisions of the act, the State Engineer's rules and regulations, and the terms of the permit.

(1) Adequate control and measuring devices are required, as provided in section 75, subsection (b) (4), and section 101.

B. The Appropriative Right and its Exercise

22. Appropriative right. The appropriative right is a right of property, the proper exercise of which is both required and safeguarded by the provisions of the act.

(a) The appropriative right is subject to all of the provisions of the act, to the rules and regulations of the State Engineer issued in pursuance thereof, and to certain specific terms and conditions which apply to and govern the exercise of the particular right.

(b) The rights and obligations that inhere in all appropriative rights which attach to a particular water supply are reciprocal.

(1) The holder of each such appropriative right is limited by the terms and conditions of his own appropriation.

(2) He may require all others to respect those terms and conditions.

23. Priority of appropriative right. The priority of an appropriative right is based solely upon the time of accrual of the right, which is a date that is determined in accordance with the provisions of sections 24 and 64.

(a) The priority determines the question as to whether the holder of the right is entitled to divert water under the terms of his appropriation at a time when the supply of water is not sufficient to satisfy all of the rights which attach to it.

(b) An appropriator is entitled to divert water only in the event that the supply is more than sufficient to satisfy all appropriative rights that have earlier dates of priority.

(1) An exception is provided in section 105, in the case of excessive losses in stream channels.

(c) The priority of an appropriation relates to a specific date, and it is not governed by the character of use of the water, or by the question of direct flow or storage, or by any other factor.

(d) All appropriative rights which attach to a single water supply, or to a common water supply, are included in a single schedule of priorities, except as follows:

(1) In the case of a single water supply, such as a long stream system, or in the case of a common water supply, such as two or more groundwater bodies having only partial interconnection, or in other comparable situations, in which the best interests of the public would be served by dividing a single water supply or a common water supply into two or more parts having separate schedules of priorities, such segregation may be made in the discretion of the State Engineer.

(2) Other exceptions are provided in sections 19 and 20, relating to return water and to salvaged water and developed water.

24. Date of priority of appropriative right. The date of priority of an appropriative right, inchoate or completed, is the date of taking the initial step required by the act for the making of an appropriation, provided that all subsequent steps required by the act and by the rules and regulations of the State Engineer are complied with fully and with due diligence (see section 64).

(a) The first step so required is the deposit in the office of the State Engineer of an application for a permit to make the appropriation (see sections 61 and 63); and the date of receipt of the application is the date of priority (see section 64); provided, that if a right of way must first be obtained by eminent domain in order to secure needed information, the date of initiating the condemnation proceedings is the date of priority (see section 46, subsection (a) (1)).

(b) Thus, the priority of the appropriative right relates back to the date of taking the initial step in making the appropriation; and this remains the case so long as the procedure for appropriating water is followed properly in all respects.

(c) If any step required in making an appropriation is not taken with reasonable diligence, or is not completed within the period of time fixed by the State Engineer either originally or in an extension granted upon good cause shown, the applicant is not deemed as being entitled to his original date of priority.

(1) In such case, if the appropriation continues, the priority relates back only to the date after which the appropriator exercises reasonable diligence in taking every step required of him (see sections 66, 77, and 79).

(d) An appropriative right in good standing, whether inchoate or completed, is deemed to have accrued upon the date of its priority.

25. Effect of postponement of priority. If, for any reason, the date of priority of an application for a permit to appropriate water, or of a permit, is changed to a date later than the date of making the application (see sections 66, 77, and 79), the priority of the right thereby becomes junior to all appropriative rights that have accrued between the original date and the date to which the priority is so postponed.

26. Limit of appropriative right. The public interest requires that the use of water be both beneficial and economical; that the methods of diversion, conveyance, and use of water be reasonably efficient; that the diversion and use of water conform, insofar as is practicable, to the best utilization of the water supply; and that the diversion and use of water at any particular time be not in excess of the requirements of the appropriator at such time, as contemplated by the terms of his appropriation.

(a) Every appropriation of water, and the exercise of every appropriative right, is subject to these requirements.

(1) No appropriation may be made of a quantity of water which exceeds such requirements.

(2) Irrespective of the capacity of the works, lands, or other means of use, no diversion of water in excess of the quantity reasonably necessary for its lawful use shall be permitted by the State Engineer or sanctioned by the courts.

(b) No appropriation or diversion of water may be made in excess of that quantity which, in any particular case, --

(1) Can be diverted and brought to the place of use by means of works and appliances which conform to the highest standards of efficiency that are reasonably applicable to the physical and economic circumstances of the community.

(2) Can be put to a use which is beneficial to the appropriator, under reasonable and economical methods of application to the soil or other use, insofar as is consistent with the natural conditions in the locality and, in case of irrigation, consistent with the water requirements of crops that can be or are being advantageously produced therein.

(3) Is reasonable in relation to both (a) the reasonable requirements of all existing and prospective appropriators of water from the same water supply, and (b) the interest of the public in the best utilization of the public water supplies.

(c) Unnecessary losses of water from works for the diversion, storage, conveyance, distribution, and use of water, are not a part of the appropriative right.

(1) Such works and appliances must be such, when first constructed, as to conform to the requirements of subsection (b) (1) above, and must be kept thereafter in such state of repair as to reduce losses of water therefrom to the most practicably attainable minimum.

(d) The quantity of water which may be claimed under an appropriative right is not uniform per acre or other mathematical unit throughout the State, and is not necessarily uniform throughout an area served from a single water supply.

(1) The act does not impose any numerical limitation, such as maximum number of acre-feet per acre, upon the quantity of water which may be appropriated.

(2) The quantity, whatever the purpose of use, is to be determined by the State Engineer in the case of each individual appropriative right, in view of the requirements of this section.

(e) Whatever may be the quantity of water claimed under an appropriation, wasteful use of water is not within the appropriative right.

(1) Whether or not a particular use of water is wasteful, is to be determined from all of the circumstances which have a bearing upon the question of best utilization of the entire water supply.

(2) A use of water is wasteful if it exceeds the requirements of the appropriator as measured by the standards herein provided and precludes use of the wasted water by other appropriators under such standards.

(3) A use which substantially exceeds the average water requirement for similar uses in the community, is not necessarily wasteful because of that fact alone.

(4) A use of water is not to be deemed wasteful if (a) it is reasonably adapted to the soil and topography, (b) it furthers the practicable utilization of the land, (c) applications of water in excess of the consumptive use do not result in injury to land, and (d) the excess water enters a water supply and is there available for diversion by other appropriators.

(f) An appropriation of ground water includes the right of protection in the continuance of a method of diversion which is reasonable in relation to the requirements of all appropriators of water from the same source of supply, but does not vest in the appropriator the right to continue his pumping of water from the level at which he first encounters it if the maintenance of the ground water at such level is not reasonable.

(1) A pumping plant of inadequate capacity to lift water from the lowest level from which it is economically feasible to pump, in view of the circumstances of the community, or a well not deep enough for such purpose, is not a reasonable method of diversion, if the effectuation of the best utilization of the entire ground-water supply would necessarily result in lowering the water level beyond the capacity of such pumping plant or below the bottom of such well.

(2) An appropriator of ground water is entitled to protection against diversions by later appropriators which result (a) in lowering the ground-water level below the height from which it is economically feasible, in view of the circumstances of the community, to pump the quantity of water which he has appropriated, or (b) in exhausting the supply either before or after the water level drops to such point, or (c) in causing a substantial deterioration in the quality of the water to which his appropriative right attaches.

(3) So long as the appropriator can obtain water from the water supply in question, of the quantity appropriated and of substantially the same quality, with an economically feasible pumping lift as above provided, he is not entitled either (a) to restrain diversions by later appropriators which result in lowering the ground-water level, notwithstanding the fact that such lowering of the water level necessitates his installing a larger pump and/or deepening his well in order to be able to make use of the quantity of water he has appropriated, or (b) to collect damages from such later appropriator or appropriators on that account, or (c) to require compensation from them for the expense of so installing a larger pump or deepening his well.

(4) It is only those ground waters which can be diverted from the water supply with a reasonable and economically feasible pumping lift that are subject to appropriation (see section 17 and section 74, subsection (d)).

(5) Nothing in the act is to be so construed as to prevent the granting of permits to applicants for permits to appropriate ground water, on the ground that such proposed appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as the rights of holders of existing appropriations can be satisfied with a pumping lift which is found by the State Engineer to be reasonable and economically feasible under all the circumstances (see section 75, subsection (d), and section 80, subsection (e)).

27. Enlargement of appropriation. An appropriation is limited by its specific terms, and all other appropriators from the same water supply are entitled to require the holding of the exercise of the right to such terms.

(a) No enlargement of the appropriative right may be effected to the detriment of any other appropriative right, whether senior or junior to the right in question, with or without the approval of the State Engineer.

(1) An enlargement of an appropriative right is deemed to be such an extension of its terms as would result in an increased diversion of water, or a longer period of diversion, or an extension of the irrigated area originally contemplated, or any other operation that would in any way deprive other appropriators of the use of any water that would be available for use under their own appropriative rights, if the appropriative right in question were held to its original terms.

(b) An alteration in the terms of an appropriation that does not result in an actual enlargement, may be made with the approval of the State Engineer, which may be granted only after affording a hearing. (See sections 32, 33, and 34).

(c) An appropriator who desires to make such use of water as would result in an enlargement of his appropriation, must make a new appropriation covering such enlargement, which new appropriation will have its own separate date of priority.

(1) Such date of priority is not earlier than the date of making application for a permit covering the enlargement. (See section 66 concerning enlargements in the case of a pending application.)

28. Appropriations for direct use and for storage. An appropriation may be made which involves either the use of water immediately upon its diversion from a water supply, or the storage of water pending its later use; or a single appropriation may be made which involves both operations.

(a) The storage of water, whether the use is to be made during the season in which the water is impounded, or during a subsequent season or seasons, is a part of the appropriative right in question, but is simply one of the operations by which the water is controlled for use.

(b) No preference or priority is accorded as between appropriative rights that involve the immediate use of water, and those that involve storage for later use, other than is accorded by their respective dates of priority.

(1) All appropriative rights which attach to a water supply conform to a single schedule of priorities, regardless of whether they severally imply immediate use of the water, or storage pending later use, or both.

29. Appropriations that involve storage. Water may be impounded under an appropriation in any manner that meets the approval of the State Engineer, that conforms to the provisions of the law governing the construction of dams and reservoirs, and that conforms to all other requirements of law.

(a) Without limiting the generality of the foregoing, such storage of water may be effected in any of the following ways,

(1) In a reservoir constructed in the watercourse or other surface water supply to which the appropriation attaches; the impounded water to be withdrawn for use according to the terms of the appropriation.

(2) In a reservoir constructed in a natural channel, or elsewhere, away from the watercourse or other water supply to which the appropriation attaches; the water to be diverted from the water supply and conveyed to the reservoir through a feeder canal or other means of conveyance, and to be withdrawn from storage for use under the terms of the appropriation.

(3) In the ground; the water to be diverted from the water supply to which the appropriation attaches, spread upon the ground by any appropriate means approved by the State Engineer, allowed to percolate into and through the strata of the ground by natural processes, and withdrawn by pumping or other means of diversion under the terms of the appropriation. The quantity of water thus stored in the ground remains the private property of the appropriator, notwithstanding its mingling with other ground water, subject to its reasonable identification, as to quantity, time, and place, to the satisfaction of the State Engineer. The act provides specific procedure for effectuating this right of storage of water underground and of its subsequent recovery, and for safeguarding the rights of others to the use of other water existing in the same underground strata.

(b) An appropriation may be made of a quantity of water to be stored in excess of the capacity of the storage facilities of the appropriator at any one time; the reservoir or reservoirs to be replenished, after water has been withdrawn from them, at such time or times and under such conditions as are covered by the terms of the appropriation.

(c) An appropriator of water, who originally contemplates only direct use, may subsequently utilize storage as a part of his plan of distribution, under the original appropriation and with its priority, provided such use does not involve any enlargement of the appropriation as to quantity of water, period of diversion, period of use, area to be irrigated, or otherwise.

(1) Such operation requires the approval of the State Engineer, which may be granted only as provided in section 32.

(2) Any enlargement of the appropriation so occasioned must be the basis of a new appropriation, with a separate date of priority, as in case of any other enlargement of an appropriation. (See section 27.)

30. Conveyance of water across State lines. Water may be conveyed across the lines of this State for use under an appropriation therefor, whether made from an interstate or intrastate water supply.

(a) An appropriation may be made of water which is to be diverted within this State and conveyed across the State line for use in any other State or nation, provided that the laws of such other State or nation grant the same right to appropriate water therein for use in this State.

(1) Such an appropriation is made under the procedure provided in the act for the appropriation of water, and it is accorded all the benefits and is subject to all the limitations that apply to appropriations made in this State for the use of water herein.

(b) The use of all water that is appropriated in another State or nation, and brought into this State for use, is subject to the priorities of appropriative rights and to the use of water in the exercise of such rights under the provisions of the act.

(1) The fact that water used within this State has been diverted under an appropriation made in and under the laws of another jurisdiction, does not deprive the State Engineer of the power and duty to regulate the use of such water under the laws of this State.

(c) The State Engineer is authorized to enter into any lawful agreement with the State Engineer or other proper officer of such other State or nation, duly authorized to agree thereto, in order to carry out the purposes of this section and to provide for completing such appropriative rights and for having them determined and administered.

(1) This subsection is not to be so construed as to authorize the initiation or making of an interstate compact without following the procedure provided by law for the negotiation, execution, and ratification of interstate compacts.

31. Use of natural channel. A natural channel may be utilized for the storage or conveyance of water in the exercise of an appropriative right; or it may be used for the disposal of water diverted in the exercise of an appropriative right and not required, or in the drainage of land; provided that in each case the necessary easements are acquired.

(a) An easement for such utilization of any natural channel that belongs to the State is granted by the act.

(b) Water stored in a reservoir located in the channel of a water-course to which the appropriative right attaches, may be released from storage into such channel and diverted at downstream points.

(c) Water diverted from a water supply may be discharged into and subsequently rediverted from any natural channel, whether that of the water-course to which the appropriative right attaches or otherwise.

(d) The use of the natural channel must be made according to plans approved by the State Engineer, and must be exercised under his control and supervision.

(1) The State Engineer will determine the net losses in the channel which must be charged against the appropriator who utilizes the channel in the exercise of his water right.

(e) The use must be made in such manner as neither to impair the property of owners of lands adjacent to the channel, or the rights of others to the use of the channel.

(1) No person who is entitled to the flow of water in the channel must be deprived of any part of the flow by reason of the use authorized by this section.

(f) The one who utilizes a natural channel in accordance with the provisions of this section is entitled to divert the entire quantity of water which is retained in storage in the channel, or which is discharged into the channel for the purpose of redirection, minus the losses determined by the State Engineer.

(1) One who so uses a natural channel with the intention of diverting or rediverting the water, is not to be deemed as having abandoned any part of such water or as having abandoned or forfeited any part of his appropriative right, provided he makes the diversion or redirection.

32. Change of facilities, use of water, and place of use. An appropriator may change the facilities or the location of the facilities in connection with which his right is being exercised, or may change his use of the water or the place of use, provided that the change has the approval of the State Engineer and that it does not impair the rights of others or of the public.

(a) Such changes may be permanent or temporary.

(b) Such changes include the following:

(1) Location of point of diversion.

(2) Location of all or part of the works used in the diversion, interception, storage, conveyance, and distribution of water.

(3) Substitution of new works in place of existing works, with or without change of location.

(4) Enlargement or extension of works, or installation of additional works, beyond the description of works in the permit to appropriate water.

(5) Place of use of water.

(6) Purpose or character of use of water.

(c) In case the use of water is changed to other land, as herein provided, the water right ceases to be an appurtenance of the land from which so severed and simultaneously becomes appurtenant to the land to which the use is so transferred (see section 35).

(d) Before making any such change, whether permanent or temporary, other than in the cases stated in subsections (e) and (f) below, the approval of the State Engineer must be obtained.

(1) Application must be made on a form to be provided by the State Engineer.

(2) Notice must be given, and a hearing held in case any protest is received within the time allowed, in the manner provided in sections 9 and 10.

(3) Before granting the approval, the State Engineer must find that the change will not result in enlarging the terms of the appropriation, and that the rights of others or of the public will not otherwise be impaired.

(4) If the State Engineer finds that the change, if made, would result in effecting an enlargement of the appropriation (see section 27), he must withhold approval pending the making of a new appropriation to the extent of the increase; provided, that enlargement of the capacity of works, or betterment of their condition, or other change in the works or lands or use of water that does not result in increasing the use of water beyond the terms of the existing appropriative right, is not to be deemed as enlarging the appropriation.

(e) The prior approval of the State Engineer is not required in the case of repairs, betterments, or replacements of works that do not substantially change the character of the works as authorized in the permit to appropriate water.

(1) The State Engineer, in his rules and regulations, may amplify the provisions of this subsection, and may provide that the appropriator, before making the change, notify him in writing of any proposal to make changes of designated character which do not require his prior approval.

(f) In the case of an appropriation for irrigation purposes, the appropriator may change the type of agriculture or kind of crops at will, without obtaining the approval of the State Engineer, and without notifying him of the change except in the course of making annual or other reports, provided --

(1) That the change does not involve a greater use of water than is covered by the terms of the appropriation (see sections 26 and 27); and

(2) That no more water is used than is required for the new agriculture or the new crops grown on the lands to which the appropriative right is appurtenant, even though the requirements of such new agriculture or new crops involve a smaller aggregate use of water than is covered by the appropriation (see sections 26 and 65).

(g) If in any of the cases stated in subsections (e) and (f), a change is made or is proposed to be made, the State Engineer may order the appropriator to show cause why the change should not be allowed, in the manner provided in section 10; or any interested party may do so upon reasonable showing, supported by affidavit, that the change violates or would violate the requirements of this section or of any other part of the act.

(h) No change that is properly made, in accordance with the provisions of this section, must be deemed to have affected the validity of the appropriative right in question, or to have altered or forfeited the priority of such right.

(1) Such change is not to be construed as an abandonment or forfeiture of the appropriative right or of any part of it, or as evidence of an intention to abandon the right, or as ground for postponing the date of priority.

33. Rotation in use of water. Appropriators may rotate in the use of the combined quantities of water to which they are collectively entitled, or a single appropriator having rights of different priority may do so, under the following conditions:

(a) A voluntary plan or schedule of rotation which involves two or more diversions from a water supply, or two or more priorities, must be approved by the State Engineer before it is put into operation, and it must be carried out under the supervision of the State Engineer.

(1) Application for approval must be made to the State Engineer on a form to be provided by him.

(2) Notice must be given, and a hearing held in case protests are received, as provided in sections 9 and 10, before such approval may be granted.

(3) This subsection applies to rotation plans that involve changes in the rates of diversion or periods of diversion from a water supply, and not to plans of rotating water among users after the water has been diverted from a water supply into a distribution system. Approval of the State Engineer is not required in the latter case.

(b) The State Engineer may impose a rotation schedule upon two or more appropriators of water from a water supply, without their consent, subject to judicial review; or a rotation schedule may be so imposed by the State Engineer or by the court in an order of determination of water rights or in a decree of adjudication; provided, that in any such case the State Engineer or the court must first make a finding, upon consideration of all the circumstances, that the operation of the schedule will effectuate a

better utilization of the water supply and that it will not impair the rights of the parties or of any others.

(c) The management of a water-delivery organization may impose a plan of rotation upon the water users, provided that it does not impair their rights of use or the proper use of the water.

(d) No plan of rotation that is so imposed by the State Engineer, or by a court, or by the management of a water-delivery organization, must be such as to result in depriving any appropriator or water user of the full quantity of water to which he is entitled in any season, or in impairing the value of his use of the water under any other plan of distribution to which he has been accustomed.

(1) Mere inconvenience to water users in adapting their use of water to a rotation system is not a bar to the imposition of the system.

(e) The operation of a rotation system, in any case, must not be such as to impair the rights of those who are not parties to the plan.

(1) Such other parties must not be deprived of the use of water in the quantity or quality to which they are entitled under the terms of their appropriations, or in their lawful time of use, because of alteration in the quantity of water available at their diversion points or in other conditions which existed in the water supply prior to the installation of the rotation plan.

(f) The adherence of an appropriator to a plan of rotation, as provided herein, does not impair in any way the validity of his appropriative right or alter the date of priority.

34. Exchange of water. Appropriators may exchange water with one another, with the approval of the State Engineer, provided that the rights of others and of the public are properly safeguarded.

(a) An appropriator may deliver either direct flow or stored water into any natural channel, ditch, or conduit for the use of any other appropriator, or may deliver it directly to the latter's place of use, or may authorize the latter to divert such water from the water supply, in exchange for an equivalent quantity of water which the latter is entitled to divert from the water supply at the time the exchanged water is taken by the former.

(1) Any or all of the points at which the first-named appropriator delivers the water to the latter or authorizes him to divert it, may be either above or below any or all points at which the first-named appropriator takes the water in exchange.

(b) Any number of appropriators may make such exchanges with one another under a common plan of exchange.

(c) Any plan of exchange of water must be first approved by the State Engineer, and its operation is under his supervision.

(1) Application for approval must be made on a form to be provided by the State Engineer, with notice and hearing as provided in sections 9 and 10.

(2) The necessary adjustments for stream gains and losses are made by the State Engineer.

(d) The plan of exchange must be operated in such manner as not to impair the rights of appropriators who are not parties to the plan.

(e) This section is not to be so construed as to authorize a senior appropriator to loan water to a junior appropriator at a time when the water is not needed by the senior appropriator but is needed by appropriators with intervening priorities, thus precluding the intervening appropriators from exercising their rights in accordance with their several priorities.

(1) The purpose of the plan is to effectuate a better utilization of the water which the participants are entitled to divert under the terms of their several appropriative rights.

(2) Its purpose is not to advance the priority of any participant ahead of the priority of any appropriator who is not a party to the plan.

(f) Participation in such a plan of exchange of water, as herein authorized, does not impair the validity of the appropriative right of any participant in any way, and it does not alter the date of his priority.

35. Appurtenance of water right. A water right is appurtenant to the land on or in connection with which the water is used; but it is not an inseparable appurtenance.

(a) The right remains appurtenant to the land so long as it continues to be exercised by the holder, or by another with his consent, in connection with the use of such land under the terms and conditions of the water right.

(b) It passes with a conveyance of the land by deed, lease, mortgage, testament, or other voluntary disposal, or by inheritance.

(1) If the water right is not mentioned specifically in an instrument by which land is conveyed, the burden is upon the one who makes the conveyance to prove, by a clear and strong preponderance of the evidence, that the parties did not intend that the appurtenant water right should pass with the land.

(c) It may be reserved in express terms in any conveyance of the land to which it is appurtenant, or it may be separately conveyed whether or not the land to which it is appurtenant is conveyed.

(d) It may be severed from the land to which it is appurtenant and simultaneously transferred to other land, under the provisions of section 32,

in which case the water right becomes immediately appurtenant to the land to which it is transferred.

(e) It does not pass with land to which title is acquired by adverse possession.

(1) The act specifically provides, in sections 56 and 60, that title to a water right may not be acquired by adverse possession.

(2) When the rightful holder of the land ceases his use of the water as the result of the acts of an adverse party or otherwise, without providing specifically for the continuance of its use by another, the water right becomes subject to abandonment or forfeiture, as the case may be, as provided in sections 50 to 57, inclusive.

(f) Upon the loss of a water right to the holder, as provided in sections 50 to 57, inclusive, such water right becomes extinguished; and upon extinguishment, the water right necessarily ceases to be an appurtenance of the land to which it was formerly attached.

36. Transfer of water right. A water right or claim may be transferred to another, provided the transferee possesses all of the qualifications imposed by the act upon a holder of such right.

(a) Applications for permits to appropriate water, and permits, may be transferred by instruments in writing.

(1) Such instruments must be acknowledged in the manner provided by law for the acknowledgment of conveyances of title to real estate.

(2) An application for a permit may be transferred only with the prior written approval of the State Engineer.

(3) Transfers of applications or of permits are not binding, except upon the parties to the transfer, unless and until they are recorded in the office of the State Engineer.

(b) In other cases, except where rights are evidenced by shares of stock in a corporation, the transfer must be made in substantially the same manner as is provided by law for the transfer of title to real property.

(1) Such transfers must be recorded in (a) the county records of the county in which the diversion of the water from the water supply is made, (b) the county records of the county in which the water is applied to use, and (c) the office of the State Engineer.

(2) The provisions of law relative to the recordation of and the failure to record transfers of title to real property apply to transfers of water rights hereunder.

(c) The recordation of a transfer of title to a water right imparts notice to all persons of the contents thereof.

(d) No transfer of a water right or claim must be recognized by the State Engineer, or by any court of the State, unless the transfer is made in compliance with the provisions and requirements of this section.

(e) Failure to observe the formalities required for the transfer of a water right must not be construed as an abandonment of the right, or as either conclusive or prima facie evidence of an intent to abandon the right. (See section 50.)

37. Value of appropriative right. Every holder of a permit or certificate of appropriation must accept the same on the condition that no value, in excess of the actual amount paid to the State in acquiring it, shall be claimed for either the inchoate or completed appropriative right with respect to the regulation of rates or services to be rendered by the holder of the right or his successors, or with respect to any valuation for purposes of sale to any governmental agency or entity or in any eminent domain proceeding, or with respect to charges made by a primary appropriator to secondary appropriators in connection with water service or transfer of water rights. (See section 41.)

C. Appropriators

38. Qualifications of appropriator. An appropriation of water may be made by a person, or by two or more persons associated formally or informally, or by the legal representative of one or more persons, or by a partnership, or by a public or private corporation, or by a governmental agency or entity.

(a) An intending appropriator must have the financial ability to consummate his proposed appropriation.

(b) An intending appropriator must make his application for a permit to appropriate water in good faith, and not for the purpose of mere speculation or for the purpose of acquiring a monopoly in water which would preclude its best utilization.

(c) The only citizenship qualifications that are imposed upon an appropriator are those which apply to the ownership of real property within the State.

(d) An agent may appropriate water on behalf of his principal, provided that the agency is specified in the application for a permit and in all other papers relating to the appropriation that are deposited in the State Engineer's office while the agency exists.

(e) The State Engineer, with the consent of the Governor, may withdraw certain waters from appropriation pending the making of investigations relating to their most complete utilization, or may make an appropriation for that purpose. Such waters may be released for private appropriation only in the event that the withdrawal is rescinded in the same manner as that in which it is made; or waters so appropriated for the State by the

State Engineer are subject to private appropriation only with the consent of the latter.

39. Qualifications of appropriator with respect to ownership of land. Ownership in fee, by an intending appropriator, of the land to be irrigated or in connection with which the water is otherwise to be used, is not required.

(a) Failure to acquire fee title to such land after initiating or completing an appropriation does not affect the validity of the proceedings or of the appropriative right.

(b) One who is not the owner of land, but who holds a valid right of possession, may appropriate water for use on or in connection with such land and is deemed to be the appropriator so long as he keeps his inchoate water right in good standing or continues to exercise his water right, when completed, under the terms of his appropriation.

(1) During his possession of the land, or promptly upon the termination of possession, such appropriator may sell or lease his inchoate or completed appropriative right to the owner of the land; or, if the owner consents, he may sell or lease it to a subsequent lessee or other holder of a right of possession.

(2) At any time during or promptly upon the termination of his possession of the land, or promptly upon the termination of any lease that he may have made of the water right as above provided, such appropriator may initiate proceedings for the transfer of such water right to other land, provided that written notice of his having applied for a permit to make the transfer is given by him to the owner of the land within ten (10) days after the deposit of his application in the office of the State Engineer. (See section 32.)

(c) An appropriation may be made for the use of water on or in connection with land by a trespasser thereon.

(1) Such an appropriation is not invalid as against the public or the State on the sole ground that the appropriation was initiated or completed in trespass.

(2) The State Engineer is not authorized to reject an application for a permit to appropriate water or to cancel a permit or to refuse to issue a certificate of appropriation on that ground alone.

(3) Both the State Engineer and the courts must recognize such an appropriation so long as the trespasser complies with all of the requirements for appropriating water.

(4) Such appropriative right remains the property of the trespasser so long as he remains in possession of the land, whether before or after the perfecting of title to the land by adverse possession, provided that such trespasser complies with all the terms and conditions of the appropriative right.

(5) Such an appropriation is unlawful only as against the rightful owner of the land, and only to the extent that the acts of the trespasser in connection with the appropriation constitute an invasion of the property of the rightful owner. His legal remedy is to bring ejectment proceedings against the trespasser, and not to contest the validity of the appropriation on the ground that it was made or is being made in trespass.

(6) At any time during his possession of the land, the trespasser may prosecute proceedings for the transfer of the appropriative right to other land, under the procedure provided in the act. (See section 32.)

(7) If ejected, the trespasser may likewise prosecute proceedings for the transfer of the water right to other land, provided that immediately upon the conclusion of the ejectment proceedings he gives written notice to the rightful owner of the land of his intention to apply for a permit to transfer the water right and initiates the necessary proceedings for the transfer within thirty (30) days thereafter.

(d) The consent of the landowner is not necessary to the right of a valid possessor or of a trespasser to apply for a permit to transfer the appropriative right to other land, in the cases stated in subsections (c) and (d) above, or to make the transfer if duly authorized by the State Engineer.

(1) If all of the conditions prerequisite to the transfer of an appropriative right to other land, as contained in section 32, are met, the application by the appropriator for a permit to make the transfer in the above cases must not be denied because the landowner protests or objects that his land will be without a water right if the transfer is carried out, unless the landowner proves that the making of the transfer would violate some agreement entered into by the appropriator.

(e) If the possession of land by either a rightful possessor or a trespasser is terminated without his making or having made provision for the transfer or other disposal of his appropriative right, as above provided, such water right is conclusively presumed to have been abandoned, and it is thereupon subject to proceedings for the declaration of abandonment as provided for in section 54.

40. Primary and secondary appropriators. A primary appropriator may make an appropriation for the service of water to secondary appropriators.

(a) Diversity of legal title to a diversion and distribution system and to the lands served with water therefrom, or of different parts of a system, or of personnel involved in supplying and in using water, does not affect the validity of an appropriation.

(1) Thus an individual, group, or public or private organization or entity, may appropriate water for the service of others under contractual arrangements between them; or a district may do so for the service of lands included within its boundaries; or a mutual company for service to its stockholders; or a public utility for service to the public.

(b) If two or more individuals join in initiating and in completing an appropriation, they are all deemed to be simply appropriators.

(1) The appropriative right is owned by them in common, and is carried on the records in their several names.

(c) If an individual, group, organization, or entity initiates an appropriation the completion of which depends in part upon the acts of others in applying the water to use, the party who initiates the appropriation is the primary appropriator and all of the others are secondary appropriators.

(1) The concurrence of secondary appropriators may be necessary to the completion of only a part of an appropriation, or of an appropriation that includes the reuse of return water (see section 19).

(d) The primary appropriator and all secondary appropriators are deemed to be co-owners of the appropriative right, subject to whatever contractual or other legal relationships may exist between them.

(1) Formal title to the appropriative right vests in the primary appropriator, subject to the rights of ownership therein of all secondary appropriators and to the primary appropriator's trusteeship of their several interests therein; and it is carried on the records in his name.

(2) The primary appropriator has the responsibility for depositing in the State Engineer's office all papers that are required in connection with the appropriation, and for taking all of the steps that are necessary to safeguard the interests of the secondary appropriators in the perfection and protection of the commonly-owned appropriative right.

(e) A primary appropriator may represent all of the co-owners of the appropriative right, whether inchoate or completed, either as sole plaintiff or sole defendant, or as sole applicant or sole petitioner, insofar as such co-owners are concerned, in any judicial or administrative proceeding in which are involved the common interests of the primary and secondary appropriators in making the appropriation or in the exercise or protection of the appropriative right.

41. Charges for water service by primary appropriator. A primary appropriator may deliver or may provide for the delivery of water to secondary appropriators subject to the payment of reasonable compensation.

(a) No charge by a primary appropriator for the service of water that he has appropriated, or for the right to divert or to receive such water, and no purported sale to secondary appropriators of the appropriative right or of a part thereof, whether in the case of original flow or of return water, shall include any sum representing any part of the value of the appropriative right (as distinguished from the value of physical properties) in excess of the actual reasonable expenditures involved in acquiring and in defending such right. (See section 37.)

(b) In all cases in which a primary appropriator offers to serve water to the public, such water is deemed to be dedicated to public use.

(1) The rates charged for such service, and the character of the service, other than in case of a district or other governmental agency or entity, are subject to regulation by the Public Utilities Commission.

(c) In each case in which a primary appropriator who owns the distribution system offers to serve water only under private contract or agreement to individuals of his own choosing, without having previously dedicated such water to public use, the charge for the service must not exceed the proportion, properly chargeable to such water users, of the costs of operation and maintenance of the system and of a reasonable return on the investment in the water rights and physical properties used in rendering such service.

42. Appropriation by municipality for future use. A municipality may appropriate water, not only for present use, but for future municipal use in excess of its current requirements therefor.

(a) The application for a permit to make such an appropriation may cover future use only, or both present and future use. (See section 65, subsection (c).)

(1) In either event, the application must set forth, among other things, the estimated requirements for water for the reasonably anticipated development of the municipality within a reasonable span of time.

(2) If all of the prerequisites are fulfilled, the State Engineer must approve the application as to future municipal use to the extent of the full quantity of water which he finds to be necessary to accommodate the reasonably prospective growth of the municipality, and must fix a time within which the entire quantity of water in excess of current requirements must be put to the municipal use contemplated by the application.

(3) One or more extensions of time may be granted if the conditions appear to justify extending the time, as in the case of other appropriations.

(b) The approval of an application made by a municipality covering future municipal use is subject to the granting, from time to time, upon further application by the municipality, of permits to put specific portions of the excess water to the municipal use contemplated by the original application.

(1) Each such application for a permit must be accompanied by a showing that the municipality is then ready to proceed in putting such portion of the excess water to the municipal use theretofore approved.

(2) The procedure provided in the act in the case of applications for permits to appropriate water, is applicable to the applications

for permits contemplated by this subsection. (See sections 60 to 77, inclusive.)

(3) Upon receiving a permit, the municipality must proceed diligently in carrying out its provisions.

(c) Pending such time as the municipality becomes ready to make municipal use of the entire quantity of water approved for future use, temporary use may be made, by the municipality or by others, of any part of the excess over the quantity covered by the municipality's extant permits.

(1) Such temporary use is always subject to termination whenever the municipality becomes ready to put the water to municipal use under the terms of its appropriation, and it is not to be construed as vesting in any temporary user any right to have the supply continued beyond such time.

(2) Any such right of temporary use ceases when the municipality obtains a permit to use the water under its appropriation for future municipal use.

(3) Such temporary use may be made for any of the purposes for which it is lawful to appropriate water.

(d) Temporary-use permits may be issued by the State Engineer for the temporary use of any part of the excess water, upon application therefor, and without the consent of the municipality.

(1) A temporary-use permit is not a permit to make an appropriation of water; but the prerequisites of the right to appropriate water and the procedure therefor apply insofar as is practicable to the right to obtain a temporary-use permit; provided, that the temporary-use permit and indorsements thereof are evidence of the right to make such temporary use.

(2) Each temporary-use permit must set forth clearly, among other things, its nature, and the facts (a) that it is not a permit to make an appropriation of water, (b) that the water has been reserved for future municipal use by the municipality under a prior appropriation, and (c) that the temporary-use permit is subject to cancelation whenever the water is required for municipal use by the municipality, or sooner if the conditions of the permit are not fulfilled.

(3) The State Engineer may impose such requirements for construction of works, use of water, and proof of construction and use as he deems best; and whenever proof of any requirement has been made, the State Engineer must give his approval in the form of an indorsement of the temporary-use permit.

(4) Temporary-use permits have priority as among themselves according to the dates upon which the respective applications therefor were received in the State Engineer's office, provided the holders comply with all requirements imposed upon them.

(5) The State Engineer must cancel each temporary-use permit, in the reverse order of priorities, whenever the municipality shows that it is ready to put the water covered thereby to municipal use under its own permits of appropriation; and he must thereupon order the temporary-use permittee to cease his use of the water at the close of the current period of annual use, if the order is issued during a period of use, or at a later time if the municipality consents.

(6) In case of cancelation, the municipality must compensate the temporary-use permittee for (a) the reasonable value of the physical works he has constructed or acquired for the purpose of diverting, storing, and conveying the water to the place of use under his temporary-use permit, and (b) the actual, reasonable expenses incurred in acquiring and defending the temporary-use permit. If the parties are unable to agree upon the amount of compensation, the municipality must promptly institute a proceeding in a proper court for the purpose of having determined the amount of compensation which must be paid on account of the foregoing items, in the manner provided by law for determining the value of property taken by and through eminent domain proceedings, the costs of such proceeding to be borne by the municipality.

(7) The State Engineer must notify the municipality in writing of the making of all applications for temporary-use permits applying to the excess water covered by its appropriation for future use, and of the issuance and cancelation of all such temporary-use permits.

(e) The municipality itself may obtain a temporary-use permit for the use of any part of the excess water either within or outside the limits of the municipality.

(1) Such temporary-use permits are subject to all of the requirements of subsection (d) herein.

(2) The municipality may use the water thereunder for any proper purpose other than its own municipal use, or may provide for the temporary use of the water, under contracts or agreements with others, including other municipalities, for any purpose for which water may be appropriated.

(3) Each such contract or agreement covering use for a period of more than one (1) year must contain a clause giving the municipality the option of terminating the contract or agreement at any time, upon such notice and with such penalties or liquidated damages as the parties may agree upon. The charges made for the use of such water must be reasonable.

(f) In lieu of the granting of temporary-use permits, the State Engineer, upon application of the municipality, may authorize it to become as to such excess water a public utility, subject to the jurisdiction of the Public Utilities Commission over the rates and services incident to such water, pending the time or times at which the municipality may require the excess water for municipal use under its permits of appropriation.

D. Purpose of Use of Water

43. Purpose of use of water. An appropriation of water may be made for any purpose that is useful and beneficial to the appropriator and that is consistent with the interest of the public in the best utilization of its water supplies.

(a) A single appropriation may be made for two or more uses specified therein.

(b) A user of water appropriated for irrigation purposes may make domestic use of a part of the water delivered to or diverted upon his farm, without the specific inclusion of domestic use in the terms of the appropriation, whether his farm or home is located within or outside the limits of a municipality.

(1) Otherwise, an appropriation for the purpose of irrigation does not include domestic use generally within municipalities, regardless of who makes the appropriation.

(c) In all cases other than that of domestic use by an individual farm household as an implied part of an appropriation for irrigation purposes, multiple uses of water must be specified in the appropriation, and water may be used for only the purposes so specified.

(1) A municipality as an appropriator is limited by this provision, to the same extent as any other appropriator.

44. Relative superiority of water uses. For the purposes provided in this section, and for only those purposes, the superiority of uses of water is declared to be in the following order:

(a) First, domestic and municipal uses; second, irrigation and stock-watering uses; third, water power use; fourth, mining use, and manufacturing and industrial uses that are not implied in an appropriation for municipal use; fifth, all other uses, without preference as among themselves.

(b) The superiority of one use of water over another use is to be recognized and exercised in only the following cases:

(1) In case one seeks to condemn a right to make an inferior use of water in order to put the water to a superior use, as provided in section 47.

(2) In case of a conflict between two or more applications for permits to appropriate water that are pending before the State Engineer, as provided in section 73.

(c) Nothing in this section is to be construed as purporting to authorize any change in the date of priority of a completed appropriative right, or of a permit to appropriate water; or as purporting to authorize the holder of either a complete or incomplete appropriative right, acquired for any purpose, any preference in the use of water over that which

attaches to a right having an earlier date of priority, title to which earlier right the holder of the later right has not acquired.

(1) The date of priority of an appropriation that is in good standing, and not the purpose of use, determines the right of the holder to divert water at any time when the supply is not sufficient for all rights that attach to it.

(2) The holder of a right to make a superior use of water may not deprive the holder of an earlier right, for an inferior use, of his use of water at any time at which he is making proper use of the water under the terms and conditions of his appropriation, other than by acquiring title to the earlier right in order to change the use to a superior purpose. The terms and conditions of a right to use water for any purpose shall not authorize the holder to interfere with the lawful exercise of any earlier right in any other way.

(3) One who obtains title to a water right, in order to put the water to a superior use, acquires the right with its existing date of priority and subject to all other terms and conditions attached to it at the time title is thus acquired. This change of an inferior use to a superior use does not affect in any way the priorities of other appropriators from the same water supply, or the exercise of their appropriative rights.

E. Eminent Domain

45. Right of eminent domain. Inasmuch as the use of water under an appropriative right, and the right of way therefor, are public uses (see section 6), any party authorized under the constitution of the State to condemn property may exercise the power of eminent domain for the purpose of effectuating an appropriative right or of exercising it more advantageously.

(a) The sections in the act relating to eminent domain presuppose the authority of the legislature, under the State constitution, to provide for the exercise of the right of eminent domain in such cases by any person, organization, or entity possessing the qualifications required of an appropriator.

(b) In each instance, the condemnation proceedings will be governed by the laws relating to the condemnation of property for public use.

(c) Notice of the bringing of an action to condemn property for the purpose of effectuating or more advantageously exercising an appropriative right, must be given to all other appropriators whose interests might be affected thereby.

46. Condemnation of right of way. The right of way across and upon public lands of the State and private lands, if not in conflict with the public interest, may be acquired for the purpose of making an appropriation of water and of exercising an appropriative right, upon making just compensation.

(a) An intending appropriator, who has the qualifications required of an appropriator, as set forth in sections 38 and 39, may condemn a right of way for the purpose of making surveys and otherwise acquiring the information necessary for inclusion in his intended application for a permit to appropriate water.

(1) If access to land for the purpose of obtaining necessary information for inclusion in an application is denied by the owner, and if proceedings to condemn a right of way therefor are pursued with reasonable diligence and the application for a permit to make the appropriation is deposited in the State Engineer's office within a reasonable time thereafter, in view of all the circumstances, the date of priority of the application for a permit to make the appropriation relates back to the date of filing the petition in court for the purpose of condemning the right of way. (See sections 24 and 64.)

(b) The holder of a permit to make an appropriation, or the holder of a certificate of appropriation or certificate of adjudication, may condemn rights of way for the construction, maintenance, and operation of the works necessary to effectuate or to continue the exercise of his appropriative right, as the case may be, and for the drainage of land.

(1) If after obtaining a permit to appropriate water, such necessary condemnation proceedings are pursued with due diligence, the priority of the appropriation is not affected by the delay in construction of works so occasioned (see section 62, subsection (c) (3)).

(c) The right of way across or upon public land of the state for the purposes of this section is granted, provided that in any specific case the right of way must not be allowed by the court if the public agency charged with the custody and administration of such land makes a satisfactory showing that the granting would substantially impair the public interest in the best utilization of such land.

47. Condemnation of right relating to inferior use of water. Any person, organization, or entity having the qualifications required of an appropriator, as set forth in sections 38 and 39, may condemn any appropriative right held by other than a governmental agency or entity, for the purpose of putting the water to a superior use, upon making just compensation.

(a) The order of superiority of uses, for the purpose of this section, is as follows: First, domestic and municipal uses; second, irrigation and stock-watering uses; third, water-power use; fourth, mining use, and manufacturing and industrial uses that are not implied in an appropriation for municipal use; fifth, all other uses, without preference as among themselves. (See section 44.)

(b) One who acquires an appropriative right, by condemnation or otherwise, for the purpose of changing an inferior use of water to a superior use, is entitled to all the rights and privileges that appertain to that appropriative right at the time it is so acquired, and no more (see section 26, and section 44, subsection (c)).

(c) This section is not to be so construed as to preclude the right to exercise the power of eminent domain in any case in which such right would have existed if this section were not in force.

48. Substitution of water by appropriator. An appropriator or intending appropriator, the exercise of whose right or proposed right does or would diminish the quantity or injuriously affect the quality of water to which other appropriative rights attach, or otherwise interfere materially with their enjoyment, may provide at his own expense for the furnishing of substitute supplies of water to such appropriators, provided that this can be done without substantial interference with the full exercise of such rights under their then existing terms and conditions, that the public welfare will not be thereby impaired, and that the proposal meets with the approval of the State Engineer.

(a) This section applies to cases in which either surface or ground-water supplies, or both, are involved.

(b) The right of eminent domain is granted for this purpose, in any case in which the proposed substitution requires a change in the diversion, conveyance, or distribution works of any other appropriator, or in the point at which he must thereafter divert or receive the substitute supply of water.

(1) The written approval of the State Engineer must be obtained before such condemnation proceedings may be commenced, and the petition in such proceedings must contain such approval.

(2) If such approval is granted while an application for a permit to appropriate water is pending before the State Engineer, the appropriation proceedings must be held in abeyance pending the determination of the condemnation proceedings, and without loss of priority if the latter are commenced within the time allowed therefor by the State Engineer.

(c) In any case in which the proposal involves the delivery of a substitute supply of water at the other appropriator's point of diversion under exactly the same conditions that would obtain if the substitution were not made, condemnation proceedings are not required; but the approval of the State Engineer must first be obtained.

(1) The request for permission to make the proposed substitution may be included in an application for a permit to appropriate water, or may be made subsequently on a form to be provided by the State Engineer.

(2) No request for permission to make such substitution may be granted without giving notice to all interested parties, and, if protests are received within the time allowed, without holding a hearing, in the manner provided in sections 9 and 10.

(d) The substitution must be made under such general rules and regulations as the State Engineer may prescribe, and under such conditions as he may impose in his approval.

49. Joint occupancy and use of works. Works which have been constructed, or are being constructed, for the utilization of water under an appropriative right, may be occupied and used by another appropriator if their capacity is adequate, or may be repaired, enlarged, or extended and thereafter used by him, provided that the public interest requires such joint occupancy and use, that it can be effectuated without materially interfering with the proper use of the works by the original owner, and that just compensation be paid to him.

(a) The right of eminent domain is granted for these purposes.

(b) One who acquires such right of joint occupancy and use becomes part owner of the works.

(c) The final judgment in the condemnation proceedings will determine the amount of compensation to be paid and the respective interests of the joint owners in the works, and will provide for the control and operation of the works.

(1) The respective interests may be determined in accordance with the quantity of water to which each of the joint owners is entitled, or upon such other basis as may be equitable.

(2) The one having the larger interest will be entitled to control and operate the works.

(3) The judgment will allocate the annual costs of operation and maintenance in accordance with the respective interests of the owners, and will provide the method of payment or of payment and reimbursement.

F. Loss of Water Right

50. Abandonment. A water right may be lost by abandonment.

(a) The burden of proof is upon the party who asserts that a water right has been abandoned.

(b) The intention of the holder to abandon the right must exist.

(1) Express statements by the holder that he has abandoned the right, or that he intends to abandon it, are conclusive evidence of the intention if shown to have been made in earnest.

(2) The intention may be presumed because of long-continued failure to exercise the right, or may be reasonably inferred from other acts on the part of the holder that indicate an intention to abandon the right; but such presumption or inference may be rebutted by evidence to the contrary.

(3) The holding of water in storage in a surface or underground reservoir for a long period of time is not evidence of an intention

to abandon the water right, but may be considered if coupled with other acts that indicate such intention.

(4) Failure to observe the formalities required for the transfer of a water right is neither conclusive nor prima facie evidence of an intention to abandon the right (see section 36).

(c) Actual relinquishment of the water right must concur with the intention to abandon it.

(d) Abandonment of works for the diversion, storage, or conveyance of water is not, of itself, an abandonment of the water right.

(1) The works by which an appropriation of water is effectuated and exercised are only means to an end.

(2) While the use of certain described works is implied in the exercise of an appropriative right, the works are subject to proper change or replacement so long as the right is not thereby enlarged. (See section 32. If an enlargement is incident to a change, a new appropriation must be made to the extent of the enlargement, as in section 27.)

(3) The abandonment of such works, if replaced by other works within a reasonable time, is not evidence of an intention to abandon the water right, and is not to be considered as an abandonment unless coupled with a voluntary cessation in the use of the water for an unreasonable length of time (see subsection (b) (2) above, and section 32).

(e) Nor is abandonment implied by any change in the point of diversion of water, or in the location of any of the facilities by means of which an appropriative right is exercised, or in the place of use of the water, nor by a change in the purpose of use, if the exercise of the right is continued under the changed conditions (see section 32); nor is abandonment implied by the use of a natural surface channel or underground stratum in the storage or conveyance of water (see sections 29 and 31), nor by participation in plans for rotation in the use of water or for the exchange of water (see sections 33 and 34).

(1) In construing questions of abandonment, sight is not to be lost of the fact that the intent to abandon the water right itself is an essential element, and that it must be proved in all cases other than those in which the act specifically provides that a certain action or occurrence is conclusive presumption of abandonment or of an intent to abandon the water right. (See section 39, subsection (e), and section 53.)

(f) A portion of a water right may be abandoned without affecting the validity of the remaining portion of the right.

51. Forfeiture. The holder of an appropriative right who fails to exercise such right for a continuous period of three (3) years, or for an additional time granted in any particular case by the State Engineer, is deemed to have forfeited and lost such appropriative right.

(a) Extensions for not to exceed three (3) years each may be granted by the State Engineer upon showing that failure to exercise the right resulted from unavoidable causes, provided that such extension or extensions will not conflict with the public interest.

(1) Application for the first extension must be received in the office of the State Engineer before the expiration of the three-year period, and applications for further extensions must be so received before the expiration of each extended period.

(2) Notice of receipt of the application must be given and a hearing held upon protests, in the manner provided in sections 9 and 10.

(b) If the holder of the appropriative right fails to resume the exercise of his right prior to the expiration of the three year period, or, if one or more extensions are granted by the State Engineer, prior to the expiration of the last extension, forfeiture takes place upon the last expiration date.

(1) This is the case, regardless of any intention on the part of the holder either to retain or to relinquish his water right.

(2) While the intent to abandon a water right is an essential element of abandonment, forfeiture does not require an intention to relinquish the right.

(3) Time is an essential element of forfeiture.

(4) Forfeiture results from failure to exercise the right over a designated period of time, even though the holder has every intention of retaining and resuming his right.

(c) The failure to use water which results in the forfeiture of the water right, is the failure on the part of the appropriator or of someone authorized by him to make the use.

(1) Forfeiture does not result from the cessation of use by the holder of the right, if the use is made by another with the permission of the holder.

(2) This is simply a continuation of the holder's exercise of his appropriative right.

(d) The appropriative right of the holder is not to be deemed as being exercised at all, if the water to the use of which he is rightfully entitled is used by others without his permission, and hence not by himself, or if he ceases to use the water because he is estopped from asserting or exercising his right (see sections 52 and 56).

(1) Forfeiture does result if the holder ceases to use the water and does not authorize its continued use by another under the terms of the particular right.

(2) Therefore, forfeiture results from failure of the holder to use the water because of the acts of an adverse party, even though the adverse party himself makes full use of the water.

(3) Forfeiture also results if the holder ceases to use the water because he is estopped from asserting the right, if the estoppel is declared by a court of competent jurisdiction.

(e) Forfeiture does not result from those acts listed in section 50, subsections (d) and (e), from which abandonment is not implied, viz.:

(1) Abandonment of works, or change in the location of point of diversion, works, or place or purpose of use (see section 32).

(2) Use of a natural surface channel or underground stratum in the storage or conveyance of water (see sections 29 and 31).

(3) Participation in plans for the rotation or exchange of water (see sections 33 and 34).

(4) Provided, in all cases, that the exercise of the appropriative right is not discontinued for the period provided herein.

(f) A portion of an appropriative right may be lost by forfeiture without affecting the validity of the remaining portion of the right.

52. Abandonment and forfeiture -- Uncontrollable circumstances. A water right is not to be deemed as having been either abandoned or forfeited if failure to use the water results altogether from circumstances over which the holder has no physical or legal control.

(a) Without limiting the generality of this provision, such circumstances may include --

(1) Drought, or failure of the water supply from other natural causes, provided that the holder of the right is ready and willing to use the water when it is available in the water supply.

(2) Damage to the diversion or other works from floods or other causes, provided that the holder proceeds to repair the damage or to provide substitute facilities, or takes steps to require such work to be done, within a reasonable time.

(3) Loss of fertility or other damage to irrigated lands, or damage to power plants, industrial establishments, or other means of effectuating use of water, provided that within a reasonable time steps are taken to transfer the right to other lands or to replace the damaged means of effectuating use.

(b) For the purpose of this section, circumstances that do not excuse failure to use the water include --

(1) Adverse use of the water by another. (See sections 51 and 56.)

(2) Establishment of an estoppel against the holder of the water right. (See sections 51 and 56.)

53. Abandonment and forfeiture -- Particles of water. Abandonment of particles of water, after diversion in the exercise of a water right, may or may not result in abandonment or forfeiture of all or part of the water right, depending upon the circumstances of the particular case.

(a) If all or part of the water so diverted is wasted or is returned to the water supply before being used, determination of the question of abandonment or forfeiture of the water right, or of a portion of the right represented by the water not used, depends upon all of the conditions which govern abandonment or forfeiture of a water right as provided in sections 50, 51 and 52.

(b) An appropriative right is not abandoned or forfeited because of losses of water between the point of diversion and place of use, if the losses are not unreasonable (see section 26).

(1) If such losses are shown to be unreasonable, the remedy is to require the works to be placed in better condition or to be replaced, in default of which, abandonment of a portion of the water right to the extent of the unreasonable loss will be conclusively presumed.

(2) The State Engineer is authorized to order the condition to be corrected, and to take the steps necessary to enforce his order.

(c) Part of the water applied to various uses is not thereby consumed, but escapes from the premises, and the water right is not thereby abandoned or forfeited so long as it is being exercised under its terms and conditions.

(d) In the case of return water, failure to exercise a right of reuse which is authorized or which has been established as provided in section 19, may result in abandonment or forfeiture of the right to use the return water, depending upon the circumstances of the case.

54. Abandonment and forfeiture -- Declaration. Declaration of the abandonment of a water right of any character, or of the forfeiture of an appropriative right, may be made by a court of competent jurisdiction, or by the State Engineer, subject to judicial review; provided, that this section does not apply to inchoate appropriative rights that are evidenced by applications for permits to appropriate water or by permits.

(a) The procedures in sections 66, 74, 77, and 79, relating to the lapse and rejection of applications for permits and to the lapse and cancelation of permits, subject to judicial review, and to the revocation of certificates of appropriation as a result of judicial review, are the exclusive procedures under which such an inchoate appropriative right may be declared to have been lost.

(1) No court of the State has jurisdiction, unless conferred specifically or by necessary implication in the State constitution, to declare that such an inchoate right has been lost to the holder, except in

the course of a judicial review of a decision of the State Engineer as to the status of such inchoate right.

(b) In any case in which a court of the State declares that a water right has been either abandoned or forfeited, the clerk of the court must promptly furnish the State Engineer with a certificate copy of the judgment and decree.

(1) If the State Engineer learns that any such declaration has been made by a Federal court, he must request from the clerk of such court a certified copy of the judgment and decree.

(2) The cost of furnishing such certified documents is to be defrayed out of funds appropriated for the office of the State Engineer.

(c) If an appropriative right which has been declared to have been abandoned or forfeited is evidenced by a certificate of appropriation or a certificate of adjudication, the court in its final judgment and decree must order the State Engineer to cancel the certificate of appropriation or certificate of adjudication in question.

(d) The State Engineer, if he has reason to believe that a water right, other than an inchoate appropriative right evidenced by an application for a permit or by a permit, has been abandoned or forfeited, or if he is petitioned by any interested party, must order the holder of the right to show cause why his water right should not be declared to have been abandoned or forfeited, as the case may be.

(1) Notice must be given in the manner provided in section 9, and a hearing must be held at which the holder of the right and any interested party may appear and be heard, as provided in section 10.

(2) If the State Engineer determines that the water right has been abandoned or forfeited, he must make a declaration to that effect; and if the right is evidenced by a certificate of appropriation or a certificate of adjudication, he must thereupon cancel the same, giving notice of his action by publication.

(e) Upon the final judgment of the court in which a water right has been declared lost by abandonment or forfeiture, or upon the expiration of the period within which the holder may bring an action for judicial review of the State Engineer's declaration to that effect, in case action is not brought within such time, all rights of the holder with respect to such water right cease.

55. Effect of loss upon other water rights. Upon the loss of a water right, the relative status of all other rights that attach to the same water supply becomes such as would have obtained if the lost water right had never existed.

(a) The loss of a water right thus inures to the benefit of all appropriations that attach to the same water supply, and which are themselves in good standing, in the order of their respective priorities.

(1) In case of the final cancelation of an application for a permit, or of a permit, or in case of the forfeiture of an appropriative right, or in case of the abandonment of a water right of any character, the water to which such right has attached becomes unappropriated water to the same extent as though no right had ever attached to it, notwithstanding any diversion or use that may have been made of the water in the exercise of such right.

(2) If such water is needed to fulfill the requirements of any existing appropriative right or rights, completed or uncompleted, which attach to the same water supply, it thereby becomes immediately available to the holders of such rights in the order of their several priorities, and they have the first claim upon its use.

(3) If the water is not needed for such purposes, it becomes available for future appropriation.

(b) Such water is not subject in any case to independent appropriation, that is, to appropriation by the original appropriator or by anyone else independently of existing priorities.

(1) Such water is not new water.

(2) It is part of a public water supply, to which a right of use has been acquired and has been lost.

(3) Any further appropriation that purports to be made of such water is simply an appropriation of water in the water supply; and the priority of such an appropriation cannot be earlier than the date of applying for a permit, as in case of any other appropriation of water. (See sections 24 and 64.)

56. Prescription and estoppel. A water right may be lost to the holder as the result of acts of adverse parties, or because the holder is estopped from asserting the right as against one or more parties; but this is because he is thereby precluded from exercising or asserting the right, and his consequent loss of the water right in any such case does not result in its transfer to the adverse party, or to anyone in whose favor an estoppel is established, or to anyone else.

(a) If the holder of a water right ceases his use of the water, because of adverse use on the part of another, or because the holder is estopped from asserting the right, the water right in question may become subject to a declaration of abandonment or forfeiture, as the case may be, as in other cases of failure of the holder of a water right to exercise it, and with the same results (see sections 54, 55, and 57).

(b) The legislature declares specifically that no water right may be acquired solely by adverse use or adverse possession or by estoppel (see section 60), either in connection with adverse possession of the land to which a water right is appurtenant, or otherwise; and if the period prescribed in the statute of limitations, within which an action may be brought for the recovery of real property, is shorter than the period

provided in section 51 for the forfeiture of an appropriative right, then the legislature amends the appropriate section in the statute of limitations to provide a period in the case of an action to recover a water right substantially longer than the period for forfeiture.

(c) The only way in which an adverse party, or one in whose favor an estoppel is established, or anyone else, may acquire or may exercise an appropriative right, or may exercise a water right other than appropriative, is by compliance with the provisions of the act (see section 60).

(d) Therefore, in the case of prescription, the water right does not vest in the adverse party, regardless of the period of adverse use, and regardless of any relation between the period of adverse use and the period of forfeiture of an appropriative right.

(1) One who possesses land adversely may make a valid appropriation of water for use in connection with such land, as provided in section 39, subsection (c), but this is a new appropriation with a date of priority as of the date of applying for a permit to make the appropriation, and it cannot be tacked onto the appropriation of the rightful holder of the land.

(2) Or the trespasser may transfer to land, which he possesses adversely, an appropriative right of which he stands possessed, in the manner provided in section 32.

(e) Likewise, in the case of estoppel, title to the water right of the party estopped does not vest in the party in whose favor the estoppel is established.

(1) This section is not to be construed as precluding the courts from declaring estoppels against holders of water rights.

(2) It simply forbids the transfer of a water right from the party estopped to the party in whose favor the estoppel is declared.

(3) A water right to which the latter party holds title may benefit from the estoppel, and is not intended to be impaired in any way by this section; but it must be acquired by the holder under the provisions of the act, and not by involuntary transfer from the estopped party.

(f) An appropriative right, acquired under the procedure provided in the act or perfected under a former law, of course may benefit from the lapse of another water right following adverse use or estoppel, for the reason that more water will then be available in the water supply; but all appropriative rights which attach to that water supply benefit in the same way, in the order of their priorities (see sections 25, 55, and 57).

(1) This is to be clearly distinguished from acquiring title to a water right that has lapsed, for no preference over other appropriators is accorded one who has established a claim of prescription or estoppel solely by reason of his having established such claim.

57. Effect of discontinuance of works in which others have acquired easements. An appropriator is under no obligation to continue the use of water under his appropriative right any longer than he desires, but is at liberty to abandon or forfeit his appropriative right and to abandon or discontinue the use of his diversion and conveyance works at any time; provided, that the abandonment or forfeiture of his water right, and the abandonment or discontinuance of the use of his works, shall not operate to preclude others who have acquired rights in the use of such works from asserting and exercising their rights for the purposes for which the rights were acquired; provided, further, that the holder of an easement may not divert water through works abandoned or discontinued by the owner, or require it to be so diverted, other than in the exercise of a valid water right.

(a) Such rights in the use of the works may have been acquired by others by contract, or by adverse use, or by estoppel, or by an actual or presumed dedication to public use, or in any other manner in which easements in the property of others may be acquired by law.

(b) Abandonment or temporary discontinuance of the use of works by the owner does not impair the validity or exercise of easements held by others in such works, provided that the holders assert their rights within a reasonable time or within a time prescribed by statute.

(c) In case the water right of the owner of the works is so abandoned or forfeited, the water to which the right has attached becomes unappropriated water as in other cases of abandonment or forfeiture of water rights, as provided in section 55, regardless of the existence of easements which others may have acquired in the use of the works by means of which the lost water right has been exercised.

(d) No easement in the use of such works, the use of which has been abandoned or temporarily discontinued by the owner, shall be construed to include the right to divert and convey water thereby, or to require it to be diverted and/or conveyed by the owner or by any other party, other than in the exercise of a valid water right. (See section 5, subsection (b)).

(1) No water must be diverted in any such case except in the exercise of a valid water right.

G. Records

58. Records of water rights and claims. A complete record of every water right in the State, and of every claim to a water right, whether the water right or the claim exists at the time the act goes into effect or accrues thereafter, must be kept in the office of the State Engineer.

(a) Within one (1) year after the act goes into effect a claim must be deposited in the office of the State Engineer by the claimant of

every water right that has not been finally adjudicated upon the effective date of the act, or that is not then in process of adjudication, and that has not previously been recorded in the State Engineer's office, whether the claim be made to a completed or uncompleted appropriative right or to a water right other than appropriative.

(1) The claim must be presented on a form to be provided by the State Engineer.

(2) If the existing record of any such claim in the office of the State Engineer is incomplete, he must require the claimant to present the data necessary to make it complete.

(b) Within six (6) months after the date upon which the act goes into effect, the State Engineer must make formal demand upon the clerk of every trial court of the State for a certified copy of every judgment and decree relating to the adjudication of water rights issued by such court prior to the effective date of the act, other than judgments and decrees copies of which are already of record in the State Engineer's office, and for a statement of all litigation relating to the adjudication of water rights pending in such court upon such effective date or then on appeal therefrom; and he must make request for the same information from the clerk of every Federal court the jurisdiction of which includes any portion of the State.

(1) The demand or request must list the judgments and decrees already recorded in the State Engineer's office.

(2) Upon receiving the demand, the clerk of each such court of the State must furnish, as expeditiously as possible, certified copies of all water-right judgments and decrees extant upon the date upon which the act goes into effect, other than those listed in the State Engineer's demand, together with a statement of any such litigation pending in such court or on appeal therefrom upon the effective date of the act.

(c) A certified copy of every judgment and decree relating to the adjudication of water rights, issued by any court of the State after the act goes into effect, must be promptly furnished to the State Engineer by the clerk of such court.

(d) Upon the issuance by Federal courts, from time to time, of judgments and decrees relating to water rights within the State, the State Engineer must request the clerks of the courts to provide certified copies thereof.

(e) The cost of providing the State Engineer with copies of all such decrees of State and Federal courts is to be defrayed out of funds appropriated by the legislature for the office of the State Engineer.

(f) The claimant of every water right other than appropriative, that accrues after the act goes into effect, must deposit a record of such claim in the office of the State Engineer, on a form to be provided by the latter, within ninety (90) days after the first diversion or interception of water that is made in the exercise of such claimed right.

59. Record as evidence. A certified copy of the whole or of any part of the official record in the office of the State Engineer relating to an appropriative right, whether completed or uncompleted, or to a water right other than appropriative, or to a claim to a water right, is admissible as evidence in any administrative or judicial proceeding in which the particular subject matter may be involved.

(a) The conclusiveness of such evidence in the case of applications for permits to appropriate water, permits, certificates of appropriation, and certificates of adjudication, is stated, respectively, in sections 63, 75, 82, and 94.

(b) Other portions of the official record are admissible as prima facie evidence of the truth of their contents.

III. Procedure for Appropriating Water

60. Exclusiveness of statutory procedure. The procedure provided in the act is the exclusive method by which an appropriation of water may be made or initiated after the act goes into effect.

(a) No appropriation that is claimed to have been initiated on or after the date upon which the act goes into effect, is to be recognized by any court or administrative official of the State unless full compliance is made by the claimant with all of the requirements of the act.

(b) After the act goes into effect, no new use of water may be made, and no construction, enlargement, or extension of works designed to effectuate a new use of water may be commenced, otherwise than under the terms of a permit issued by the State Engineer under the provisions of the act, except in the following cases:

(1) Appropriations lawfully initiated prior to the date upon which the act goes into effect, not completed prior to such date but then in good standing, may be completed and the date of priority may be established under the provisions of the law in force at the time such appropriations were initiated, if in the judgment of the State Engineer this may be done without adversely affecting the public interest. If in the judgment of the State Engineer, the public interest would thereby be substantially impaired, the claimant of the uncompleted appropriation is required to complete his appropriation in accordance with the new procedure; provided, that the date of priority, if the appropriation is so completed, must be fixed at a date not later than the date upon which it would have become effective under the former law.

(2) A household consisting of one or more persons, or two such separate households, may make domestic use of water from a well, without making an appropriation therefor, and such use is deemed to be the exercise of a water right other than appropriative for the benefit of

such household or households. Three or more such households may not make such use of water from the same well without making an appropriation therefor on behalf of all participating households.

(3) The owner of land upon which diffused surface waters occur may make reasonable use of such waters in the protection of such lands from injury and in the furtherance of vegetative growth upon them, without making an appropriation therefor, and such use is deemed to be the exercise of a water right other than appropriative. Such waters may not be diverted for the irrigation of lands other than those on which they occur, without making an appropriation therefor.

(c) No appropriative right may be acquired solely by adverse use or adverse possession or estoppel (see sections 51, 52, and 56).

(1) The establishment of a claim of prescription or estoppel is effective only as against the holder of the water right, and its only effect is to prevent the holder from using the water in question or from asserting his right to use it (see section 56).

(2) It does not operate to transfer title to the water right to the party who establishes the claim.

(3) The only manner in which one who establishes a claim of prescription or estoppel, or anyone else, may acquire a right to the use of water, is by appropriating it under the procedure provided in the act, with a date of priority not earlier than the date upon which he deposits in the office of the State Engineer an application for a permit to appropriate water; and this is the case, even though one perfects title by adverse possession to land to which a water right is appurtenant and actually makes use of the water throughout the period of his adverse possession and use of the land, either in connection with such land or otherwise.

61. Steps in appropriating water. The procedure for the appropriation of water consists of a series of steps, each of which is specified in the act, and the proper taking of which is necessary to complete and to validate the appropriation and to establish the date of priority.

(a) The several steps are:

(1) Deposit in the office of the State Engineer of an application for a permit to make the appropriation.

(2) Action upon the application, consisting principally of preliminary consideration by the State Engineer, notice, hearing upon protests, and approval or rejection of application.

(3) Issuance by the State Engineer of a permit to make the appropriation, if the application is approved.

(4) Compliance by the permittee with the terms of the permit, including construction of works, application of the water to use, and proof of having made compliance with all requirements.

(5) Final action of the State Engineer, consisting of investigation, notice, hearing upon protests, and, if the terms of the permit are found to have been properly complied with, issuance of a certificate of appropriation to the permittee.

(b) The taking of each of the successive steps is recorded in the office of the State Engineer.

(c) The date of receipt of each document, map, or other paper deposited by the appropriator in the office of the State Engineer, in connection with an appropriation, must be indorsed thereon, and must be recorded in a book kept for that purpose.

(d) Every step that the appropriator is required to take in perfecting his appropriation must be taken in the manner provided in the act, in the rules and regulations of the State Engineer, and in the permit; is open to investigation by the State Engineer on his own motion, or on the petition, protest, or objection of any interested party, on the ground that it does not meet or has not met such requirements; and is subject to the final approval of the State Engineer before a certificate of appropriation may be issued.

(e) Every act of the State Engineer in connection with an appropriation is subject to judicial review, as in case of all administrative matters provided for in the act (see section 11).

62. Time for performance of acts. An appropriator must be accorded a reasonable time within which to perform each of the acts required in consummating his appropriation, depending upon the circumstances of the particular case.

(a) The State Engineer must fix this period of time in each particular instance, giving consideration to:

- (1) The cost and magnitude of the project.
- (2) The engineering, physical, and human factors which will apparently be encountered.
- (3) The market for water or power to be supplied.
- (4) The time within which irrigable lands may reasonably be expected to be settled and prepared for irrigation, in view of the probabilities as they appear when the period of time is fixed.
- (5) All other circumstances and contingencies that are apparent.

(b) If, in the course of making an appropriation, it appears that any particular act cannot be performed within the time fixed by the State Engineer, he may grant one or more extensions of time upon good cause shown, if not incompatible with the public interest.

(1) Application for an extension of time must be made, upon a form to be provided by the State Engineer, before the expiration of the extant period.

(2) Notice is required, in section 76, in the case of certain long extensions of time under a permit, and in other cases is optional with the State Engineer.

(3) Whether or not in any particular case notice is required, or is given without being required, no application for an extension of time may be granted without a hearing if any interested party protests or petitions the State Engineer for a hearing (see section 10).

(4) The State Engineer must grant a reasonable extension of time if it appears that the delay has been occasioned by circumstances for which the applicant has not been responsible, or that could not have been reasonably foreseen, and that the applicant has been in all respects diligent in seeking to avoid the delay.

(c) Notwithstanding the specific allowance of time for the performance of any act, the appropriator is required to exercise reasonable diligence at all times in order to insure the retention of the original date of priority of his appropriation (see sections 66, 77, and 79).

(1) The allotted time is fixed in each case with a view to doing equity not only to the appropriator in question, but to all those who may file applications subsequently, and who are directly interested in the progress of this senior appropriation and are entitled to have their relative positions clarified as early as practicable.

(2) The allowance of a generous time in any particular instance does not excuse the appropriator from pursuing his work in a businesslike manner.

(3) In case it is necessary for the holder of a permit to exercise the right of condemnation for the purpose of constructing or acquiring property necessary to effectuate his appropriation, due diligence must be exercised in prosecuting such condemnation proceedings. In such case the time set in the permit for the construction or acquisition of works will take account of the necessity of eminent domain proceedings, and the permittee will not be penalized, nor will his priority be affected, because of any delay in the proceedings for which he is not responsible. (See section 46, subsection (b) (1).)

63. Application for permit to appropriate water. The deposit in the office of the State Engineer of an application for a permit to make an appropriation of water, is the first step which must be taken in the effectuation of any appropriation that is initiated after the act goes into effect.

(a) The legislature declares specifically, and in the clearest and most emphatic language possible, that no valid appropriation of water may be initiated thereafter in any other manner.

(b) The maker of an application which is in proper form is entitled to have it considered by the State Engineer; and if the proposal meets all of the requirements of the act for approval of an application for a permit to appropriate water, the applicant is entitled to have his application approved and is entitled to the issuance of a permit.

(c) An application which has not been allowed to lapse, as provided in section 66, remains in effect until its approval and the issuance of a permit based upon it, or until its rejection.

(d) An application for a permit, so long as the application remains in effect, is prima facie evidence of the taking of the first step required in the making of an appropriation.

64. Priority of application. The date of priority of an application for a permit to appropriate water is the date of its receipt in the office of the State Engineer, provided that in case a right of way must be condemned for the purpose of securing necessary information, the priority of the application dates from the initiation of condemnation proceedings (see section 46, subsection (a) (1)); and the date of priority of the application becomes and remains the date of priority of the appropriative right so initiated, subject to subsequent compliance with all of the requirements governing the procedure for the appropriation of water (see section 24).

(a) Such date of priority of the application is retained so long as the application remains in effect, as provided in section 62.

(1) An application that is redeposited in the State Engineer's office with enlarged terms, or that is redeposited after having been allowed to lapse, becomes in every respect a new application, with a date of priority as of the date upon which the application is redeposited (see section 66).

(b) The date of priority of the application becomes the date of priority of the permit which is issued in its stead; and it remains such as long as the permit remains in effect, if the terms and conditions of the permit are fully complied with.

(1) If a permit that has been allowed to lapse is reinstated, the date of priority is postponed to the date of reinstatement (see sections 77 and 79).

(c) The date of priority of the permit becomes the date of priority of the certificate of appropriation which is issued in its stead (see section 79).

(1) This is the date of priority of the completed appropriative right.

(2) It remains such as long as the right is kept in good standing. (For loss of water rights, see sections 50 to 57, inclusive.)

65. Contents of application. The application for a permit must be made on a form or forms to be furnished by the State Engineer, with such copies in duplicate or otherwise as he may prescribe, and must contain or be accompanied by all data, including maps and drawings, needed by the State Engineer in acting upon the application.

(a) In addition to any other information which the State Engineer may provide for in his printed rules and regulations for the appropriation of water, the application must set forth:

- (1) The name and postoffice address of the applicant.
- (2) The water supply out of which it is proposed to appropriate water.
- (3) The point or points at which it is proposed to divert, intercept, or store water.
- (4) The location and description of the proposed means of diversion, interception, or storage, and of the proposed means of conveying the water, in such detail as the State Engineer may prescribe.
- (5) The quantity of water proposed to be diverted or intercepted, and the quantity proposed to be stored.
- (6) The period or periods of the year during which it is proposed to divert or intercept water for direct use or for storage, and the period or periods during which stored water is proposed to be used.
- (7) The purpose or purposes of use of the water.
- (8) The place or places of intended use, in such detail as the State Engineer may prescribe.
- (9) The several periods of time following the approval of the application within which it is proposed to begin construction, to complete construction, and to apply the water to the proposed use or uses.

(b) If the appropriation is to be made for irrigation purposes, the application must state the type of agriculture, probable crops, acreage to be irrigated, and character of soil.

(1) Information as to agriculture and crops is needed in acting intelligently upon the application.

(2) Notwithstanding the proposals as to agriculture and crops stated in the application, and the approval of the State Engineer in acting upon the application, this subsection is not to be construed as binding the appropriator to the use of any particular type of agriculture or any particular kind of crop in order to sustain the validity of his appropriation, provided the statements in the application are made in good faith. (See section 32, subsection (f).)

(3) An appropriation which authorizes the use of a certain quantity of water per season in the irrigation of certain crops contemplated at its initiation, does not authorize the use of the same quantity of water if other crops requiring the use of less water are grown on the land to which the appropriative right attaches. The appropriation is always limited by the water requirements of the crops irrigated at any particular time, whether or not the entire quantity of water covered by the appropriation is needed therefor. (See section 26, subsection (b).)

(c) If the appropriation is to be made for municipal purposes, the present population to be served must be stated.

(1) If an application by a municipality contemplates future municipal use, it must include the estimated requirements for the reasonably anticipated development of the municipality within a reasonable time, as provided in section 42.

(d) If the appropriation is to be made for power purposes, the application must state the nature of the power-development works, head and quantity of water to be so utilized, amount of power to be produced, point or points at which the water is to be returned to the water supply out of which it is appropriated, probable uses of the power, and probable places of use.

(e) The State Engineer, in his printed rules and regulations for the appropriation of water, may specify such additional information relating to the foregoing uses and such information relating to other uses as he deems necessary.

(f) If the proposal contemplates that the applicant will become a primary appropriator, solely or in part, the application must set forth all the circumstances.

(g) Each application for a permit to make an appropriation of water must contain a showing of the applicant's financial ability to complete the proposed work, or to provide for its completion, except in the case of applications made by --

(1) A governmental agency or entity.

(2) A public utility, of which the rates, services, and authority to make capital expenditures are subject to the regulation of the Public Utilities Commission.

(3) Any other applicant whose expenditures in making the proposed development are subject to the approval or regulation of any agency of the State or of the United States.

(4) One whose proposed appropriation involves the diversion of not more than five (5) cubic feet per second.

(5) Provided, that the foregoing statement of exemptions in the contents of an application is not to be construed as prohibiting the

State Engineer from making such inquiries as will satisfy him as to the financial ability and good faith of any applicant for a permit to appropriate water.

(h) If the application is made by a corporation, the State Engineer may require the submission of the articles of incorporation, names of directors and officers, amount of paid-up capital stock, and such other information concerning the corporate activities and finances as he deems reasonably necessary.

(i) If the application is made by an unincorporated association acting under articles of agreement or other form of contract, the State Engineer may require the submission of the articles of agreement, other contractual arrangement, and any other data which he may reasonably require in acting upon the application.

(j) The instructions concerning the procedure for appropriating water, which the State Engineer must cause to be printed (see section 7, subsection (h)), must set forth all of the items listed in the act as necessary for inclusion in the application, together with such additional items as the State Engineer may deem necessary.

(k) In order to reduce the cost and burden to small appropriators, the State Engineer may provide, in his rules and regulations, for simplified applications in the case of proposed appropriations of small quantities of water, so long as the items listed in this section as necessary are included in the application.

66. Adequacy and lapse of application. An application must be in proper form, and must be adequate in all other respects, before the State Engineer may approve it; and an application lapses if it is not made in proper form and is not corrected within a reasonable time, or if it is so amended as to enlarge the terms of the proposed appropriation.

(a) An incomplete or defective application must be returned to the applicant for necessary completion or correction.

(b) If an application is in proper form, and contains all information called for in section 65 and in the State Engineer's rules and regulations, the State Engineer is still at liberty to require the applicant to furnish any further data which he deems necessary in that particular case.

(1) In such case the State Engineer, in his discretion, may return the application for inclusion of additional data, or may retain the application and require the maker to provide the data in supplementary form.

(c) In any of the above cases, a reasonable time must be allowed the applicant within which to comply with the State Engineer's requirements.

(1) Extensions of time may be granted upon good cause shown, in the manner provided in section 62.

(d) An application which is returned to the maker for additional information, completion, or correction, or which is held by the State Engineer pending the furnishing of additional information, does not lapse if the maker redeposits his amended application in the State Engineer's office or furnishes the required additional data within the time allowed or within an extension of time granted by the State Engineer.

(1) In such case the application retains priority as of the date of its original receipt in the office of the State Engineer.

(e) An application must be deemed to have lapsed, and all rights thereunder forfeited and lost, if either --

(1) The amended application, or the additional information so required, is not received within the time allowed by the State Engineer; or

(2) The applicant amends his application in any such way as to enlarge the terms of the proposed appropriation. (See section 27, and section 32, subsection (d) (4), as to what constitutes an enlargement.)

(f) In case an application has so lapsed, the State Engineer must make an order declaring that it has lapsed, stating the reason, and must promptly mail a copy of the order to the applicant.

(1) In the case of an application that has lapsed because of time, the order must allow a reasonable period within which it may be redeposited as a new application, as provided in subsection (g) below.

(2) In the case of an application that has lapsed because of an enlargement in its terms, the order must declare that the enlarged application has become a new application, as provided in subsection (g) below.

(g) In every case in which an application is declared to have lapsed, whether because of time or because of enlargement in its terms, the receipt of an amended application or of additional information must be treated in all respects as the receipt of a new application for a permit to appropriate water.

(1) The date of priority of such new application is the date upon which the application in amended form, or the additional information, is received in the office of the State Engineer.

(2) In no such case, unless the order of the State Engineer declaring the lapse of the application is reversed by the court in a judicial review of the order, may the priority of such application, or of the appropriative right if completed, relate back to any date earlier than the date on which the amended application or the additional information is so received.

67. Segregation of application. An applicant for a permit to appropriate water may, prior to the approval of his application, request that it be segregated into two or more separate parts, and that the segregated parts be treated thereafter as separate applications.

(a) The request for segregation must be made by the applicant on a form to be provided by the State Engineer.

(1) In addition to other information needed to convert the application into distinct parts, the applicant must state the reasons for the proposed segregation.

(b) The State Engineer may approve the request if he deems the reasons sufficient and finds that the public welfare and the rights of others will not be impaired, but otherwise must disapprove the request.

(1) The State Engineer may approve the request without a hearing, if the time within which protests against approval of the original application has expired and no protests have been received. (See section 70.)

(2) If protests against approving the original application have been received within the time allowed the protestants must be notified by mail that request for segregation has been made and that they may protest the segregation at the hearing.

(3) In no case may a request for segregation be approved without giving protestants against approval of the original application full opportunity to protest approval of the request for segregation.

(c) The approval of a request for segregation is not to be construed as the approval of the original application or of any of its segregated parts, or as confirming their validity or good standing, or as extending any privilege to the applicant other than that of segregating the original application into two or more separate parts.

(d) In case an application is segregated, all proceedings theretofore taken with respect to the original application are deemed to apply to each of the segregated parts, but the segregated parts are thereafter treated as separate and distinct applications.

68. Application for preliminary permit. Pending the making of an application for a permit to appropriate water, an intending appropriator may make an application for a preliminary permit for the allowance of an adequate time within which to make investigations of the water supply and of other features of his proposed project.

(a) If the State Engineer deems further investigations necessary, he may treat an application for a permit to make an appropriation as an application for a preliminary permit.

(1) If the proposed appropriation contemplates the use of ground water, and if the characteristics of the proposed ground-water supply are not sufficiently known to warrant action upon an application for a permit to appropriate such water, the State Engineer must treat the application as an application for a preliminary permit, whether or not it is so designated by the applicant.

(b) The application for a preliminary permit must describe the proposed appropriation in such general terms as the State Engineer may provide

in his printed instructions concerning the procedure for appropriating water. (See section 7, subsection (i).)

(c) The approval or rejection of such an application may be ordered only after an investigation, and after a hearing if protests are filed, under the procedure provided for action upon applications for permits to appropriate water. (See sections 70, 71, and 74.)

(d) The State Engineer, in granting a preliminary permit, must require the preliminary permittee to make such surveys, investigations, studies, and progress reports as in the opinion of the State Engineer may be necessary.

(e) The preliminary permit must fix a length of time, suitable under all the circumstances, within which the preliminary permittee must complete his investigations and make an application for a permit to make his appropriation.

(1) One or more extensions of time may be granted, upon good cause shown.

(2) If the application contemplates an appropriation of ground water, and if an investigation of the proposed supply is being made or is about to be made by any agency properly qualified to make such determinations, the preliminary permit must be extended until such time as sufficient information is available to determine whether or not the granting of a permit to appropriate the water is justified.

(f) If a ground-water appropriation is involved, and if no such investigation as that contemplated in subsection (e) (2) above is under way or in prospect, the applicant for a preliminary permit must be authorized to install a well or other means of diverting the ground water if it is found to exist, and must be accorded a reasonable time within which to operate the installation in order to ascertain within reason the permanence of the supply of ground water, before being required to apply for a permit to appropriate the water.

(g) If the terms of a preliminary permit are properly complied with, the application for a permit to make the appropriation received within the time allowed, and the subsequent procedure required to complete the appropriation properly followed in all respects, the priority of the appropriative right dates back to the date upon which the application for a preliminary permit was received in the State Engineer's office.

69. Request for interim permit. Pending the approval of an application, for a permit to appropriate water, the State Engineer may grant the applicant an interim permit for the use of all or part of the quantity of water applied for, if in his judgment the rights of others will not be substantially impaired.

(a) The request for an interim permit may be made in the application for a permit to appropriate water, or may be made subsequently on a form to be provided by the State Engineer.

(b) This section is not to be construed as conferring upon any applicant any right to receive an interim permit.

(1) In any case in which the granting of an interim permit is requested, the judgment of the State Engineer as to whether or not it is advisable to grant the request, as to the length of time the interim permit shall remain in force, if granted, and as to all other conditions that must be observed, is conclusive upon the applicant and is not subject to judicial review in any action brought by him.

(c) Before approving a request for an interim permit, full opportunity to protest must be given to all interested parties, and the State Engineer's approval is subject to judicial review in an action brought by any protestant whose protest is overruled.

(d) An interim permit must be canceled when final action is taken upon the application for a permit to make the appropriation.

70. Notice and hearing upon application. Upon the receipt of an application that is in proper form, or upon the receipt of an amended application or of additional information required as provided in section 66, notice must be given in the manner provided in section 9, and a hearing must be held if any protest is received within the time allowed, as provided in section 10.

71. Approval of application. The State Engineer must approve each application for a permit to appropriate water that is in proper form if he finds, after a hearing if any protest is filed, and in any event after an investigation, that the proposal is consistent with the purpose of the act and with all of its requirements, and is not incompatible with the public interest; that there is unappropriated water available for the proposed appropriation, or that there is a reasonable prospect that sufficient water will be available; that the proposed plan is physically and economically feasible; that the applicant has made his application in good faith, that he has the financial ability to complete or to provide for the completion of the proposed work, and that in all other respects he possesses the qualifications required of an appropriator; and that there has been no sufficient showing that the rights of other appropriators will be adversely affected if the proposal is carried out.

(a) Before approving an application for a permit, the State Engineer must consider all the circumstances that appear to affect the feasibility of the proposal.

(1) He must consider, among other things, the effect of return flow from other lands and from the proposed project; character of soils, probable adaptability of the area to successful agriculture, and probable water requirements of the crops, in case the appropriation is to be for irrigation purposes; whether the proposed use would interfere with prospective uses of the same water that would better promote the public welfare; and all other prerequisites of the right to appropriate water.

(b) The State Engineer, in his discretion, may approve a use of water by natural overflow.

(c) In the case of stock watering, the State Engineer may approve a use of water from stock ponds or other depressions either inside or outside of natural channels, whether or not artificial work is necessary to render them useful for such purpose.

72. Partial approval of application. If the State Engineer finds that the proposal does not meet all of the requirements for full approval, but merits partial approval, he may approve it in part only, or he may approve it with certain prescribed conditions.

(a) The State Engineer may approve an application to the extent of a less amount of water than is applied for, or for a different period of diversion, interception, storage, or use.

(b) He may require the substitution of a method of diversion, interception, storage, or conveyance for the method proposed to be used.

(c) He may approve a temporary use of water by natural overflow, with a requirement that a mechanical means of diversion be substituted within a prescribed period of years.

(d) If the State Engineer finds that full approval of an application would result in injury to the rights of others but that partial approval would not result in such injury, he may approve an application to only the extent that would not cause such injury; or in such case he may approve an application upon condition that the conflicting rights be acquired by the applicant.

73. Preferences as between conflicting applications. In the case of a conflict between two or more applications that are pending before the State Engineer, not yet approved or rejected by him, preference must be given in the order of superiority of uses of water provided in section 44, regardless of the respective dates upon which the several applications were received in the office of the State Engineer.

(a) This order of preferences is: First, domestic and municipal uses; second, irrigation and stock-watering uses; third, water-power use; fourth, mining use, and manufacturing and industrial uses that are not implied in an appropriation for municipal use; fifth, all other uses, without preference as among themselves.

(b) The foregoing order of preferences determines which of the conflicting applications shall be approved to the exclusion or partial exclusion of the others, in case the water supply is not sufficient for all; and it determines the fixing of the respective dates of priority in the event that more than one of the conflicting applications is approved or partially approved.

(1) If the available water supply is not adequate for all of the conflicting proposed appropriations, the applications relating to inferior uses of water must be rejected or partially approved, depending upon the foregoing order of preferences and upon the quantity of water that is available.

(2) If the available water supply is more than sufficient for the requirements of the superior use, so that one or more applications relating to inferior uses may be properly granted in whole or in part, and if permits to appropriate water are issued to two or more of the applicants, the priorities of the several rights must be adjusted with respect to each other in the order of preferences above set forth, regardless of the respective dates upon which the applications were received in the office of the State Engineer.

(c) The preferences accorded by this section have no effect upon appropriations completed or applications approved before the conflict occurs.

(1) This section relates only to conflicting pending applications for permits to appropriate water.

(2) The section does not purport to accord to any applicant any superiority in the use of water after his permit has been granted, other than the superiority of the appropriation over other rights having later dates of priority (see section 23).

74. Rejection of application. If the proposal fails to meet all of the requirements set forth in the act and the further requirements imposed by the State Engineer in pursuance thereof, and if in the State Engineer's judgment it does not merit even partial approval, the State Engineer must reject the application and must dismiss the proceedings, giving prompt notification thereof to the applicant.

(a) In case an application is rejected, all rights of the applicant that are obtained by reason of having made his application, terminate at the end of the period within which he is authorized by the act to bring an action for judicial review, unless within such time he has brought such action, or upon the final judgment in the judicial review if the action of the State Engineer is thereby sustained.

(b) Upon the final termination of the rights of the applicant, notice must be given in the manner provided in section 9.

(c) The rejection of an application is without prejudice to the right of the applicant to make a new application concerning the same subject matter or substantially the same subject matter at a later date, in the event that he then makes a satisfactory showing that conditions have changed sufficiently to justify the initiation of a new proceeding.

(1) In such case the new proceeding is not to be deemed as in any respect a continuation of the original proceeding which has been dismissed.

(2) The date of priority, if the appropriation is completed as the result of the new proceeding, is not earlier than the date of receipt of the application in such new proceeding.

(d) Permits for the appropriation of ground water may be issued only to the extent of the capacity of the subterranean beds or formations to yield water with a lift found by the State Engineer to be reasonable and economically feasible, under all of the circumstances (see section 17, and

section 26, subsection (f)); and an application must be rejected if it is found that such capacity is already covered by extant appropriations of the ground water of such water supply.

75. Permit. Upon approving an application in whole or in part, the State Engineer must issue to the applicant a permit to make the proposed appropriation to the extent so approved.

(a) The permit contains a copy of the application.

(b) The permit must enumerate all of the conditions required by the act and by the State Engineer for the completion of that particular appropriation.

(1) The permit sets forth, among other things, the respective dates by which construction work must be commenced and completed, the date by which the water must be applied to the use set forth in the permit, and the date or dates by which proof of the performance of the several acts must be received in the office of the State Engineer; and it must include a requirement that all steps be taken and all work be performed with reasonable diligence, and that if, with reasonable effort, any work may be completed or any step taken in less than the time allowed, it must be so done.

(2) If the proposed appropriation contemplates the development of a project in successive units, the permit may so provide, with appropriate dates with respect to the several units.

(3) The rate of diversion of water set out in the permit will be fixed in such amount as will provide for getting sufficient water to the place of use, provided that the allowance for losses of water between the point of diversion and the place of use must be reasonable under all the circumstances.

(4) The permit must require the installation of a substantial headgate, cap, valve, or other controlling device, and a specified measuring device, at each point of diversion or pumping from the water supply and at each point at which water is released from storage, for the purpose of regulating and measuring the quantity of water that may be diverted and used. (See section 101.)

(c) Each permit for an appropriation of ground water must contain the following express conditions:

(1) The right of the appropriator relates to a specified quantity of ground water which may be obtained with a pumping lift which does not exceed the maximum lift found by the State Engineer to be reasonable and economically feasible at the time of the granting of the permit. (See section 74, subsection (d).)

(2) Such right does not include the right to have the ground-water level at the appropriator's point of diversion maintained at any level higher than that necessary to make effective such reasonable and economically feasible pumping lift. (See section 26, subsection (f).)

(d) The permit must include a statement that its exercise is subject to all of the provisions of the act and to all of the terms and conditions expressly contained in the permit, and that the permittee shall accept the permit subject to all such provisions, terms, and conditions. (See section 37.)

(1) One who accepts a permit is deemed to have accepted it subject to all such provisions, terms, and conditions; and he is deemed to have accepted the permit if he proceeds to effectuate his appropriation by virtue of the permit.

(e) The authorization to appropriate water contained in a permit is contingent upon compliance by the permittee with all of the provisions of the permit.

(f) A permit, unless canceled for failure to comply with its provisions (see section 77), remains in effect until the requirements for perfecting the appropriation have been fully complied with and a certificate of appropriation has been issued in its stead.

(1) A permit, so long as it remains in effect, is prima facie evidence of the terms and conditions of the inchoate appropriative right and of the holder's right to exercise the permit, and is conclusive evidence of the truth of its contents.

76. Extensions of time under permit. In the case of the performance of any act required to complete an appropriation, after a permit has been issued, extensions of time not exceeding ten (10) years in the aggregate may be granted without giving notice, upon proper showing by affidavit or upon such investigation as the State Engineer may deem necessary, if in his judgment it is advisable to proceed without giving notice.

(a) Before granting any request that will increase the aggregate extensions for the performance of any act beyond ten (10) years, notice of the receipt of the request must be given in the manner provided in section 9, and a hearing must be held upon protests as provided in section 10.

77. Lapse and cancelation of permit. A permit is deemed to have lapsed if the holder fails to comply with any of its provisions; and it thereupon becomes subject to alteration in the date of priority, or to cancelation, as the case may be.

(a) If it appears to the State Engineer that a permit has so lapsed, he must order the holder to show cause why his permit should not be declared to have lapsed, stating the reasons upon which the order is based.

(1) The State Engineer must take such action promptly if the permittee fails to make proof of the performance of any act within the time allowed by the State Engineer, or within an extension of time granted upon good cause shown.

(2) The State Engineer must likewise take such action upon the petition of any appropriator of water from the same water supply, or any applicant for a permit to appropriate water therefrom, or any other interested party, who protests that the permittee has failed to exercise reasonable diligence in prosecuting the construction of works or the application of water to the proposed use, notwithstanding the fact that the time allowed for such purpose may not have expired, or has failed to comply with any other provision of the permit, and who makes a prima facie showing, supported by affidavit, of the facts which he asserts.

(3) Notice must be given and a hearing held in the manner provided in sections 9 and 10.

(4) If the State Engineer finds that a failure to request an extension of time has resulted from oversight, or inadvertence, or other cause that appears justifiable under the circumstances, and that in all other respects the permittee has been diligent, and that it would be inequitable to penalize him, the State Engineer may declare that the permit has not thereby lapsed.

(5) Otherwise, the State Engineer, upon finding that the permittee has failed to comply with the provisions of the permit upon the grounds complained of, must declare the permit to have lapsed.

(b) The permittee must be granted a reasonable time within which to request that his lapsed permit be reinstated with a postponed date of priority.

(1) The State Engineer, if the circumstances justify, may order the permit to be reinstated.

(2) In such case, the date of priority must be changed to the date of reinstatement, and the State Engineer must promptly notify the permittee by mail to that effect.

(c) If no request for reinstatement is received within the time allowed, the State Engineer must cancel the permit and promptly notify the permittee by mail to that effect.

(d) The cancellation of a permit terminates the authorization granted by the State to appropriate the water in question.

(1) After the issuance of the State Engineer's order canceling a permit, the holder has no right to make any use of the water in question unless and until the order has been set aside or modified by the final judgment in a judicial review of the State Engineer's action.

(2) After the issuance of an order of cancellation, all other rights of the permittee with respect to such appropriation terminate at the end of the period within which he is allowed by the act to bring an action for judicial review of the State Engineer's action, unless within such time he has brought such action, or upon the final judgment in the judicial review if the action of the State Engineer is thereby sustained.

(3) Upon the final termination of the rights of the permittee, notice must be given in the manner provided in section 9.

(4) Upon the final termination of the rights of the permittee, the water to which the permit has attached again becomes unappropriated water, subject to further appropriation or to the use of other appropriators in the order of their priorities, notwithstanding any diversion or use that may have been made of the water under the terms of the permit. (The effect upon other water rights is the same as provided in section 55.)

78. Proof of performance of acts. Proof must be furnished, by the holder of the permit, as to the time and fact of commencement of construction, completion of construction, and application of the water to use.

(a) The State Engineer may provide, in his rules and regulations for the appropriation of water (see section 7, subsections (g) and (h)), that such proof be furnished either --

(1) Upon the performance of each one of the several consecutive acts, on or before the respective dates for making proof which are prescribed in the permit; or,

(2) Upon the completion of the last act, namely, application of the water to use, and on or before the date for making proof set out in the permit.

79. Certificate of appropriation -- Issuance. Upon the completion of all requirements imposed by the act, by the rules and regulations of the State Engineer, and by the permit, the permittee is entitled to the issuance of a certificate of appropriation by the State Engineer.

(a) Upon receipt of all proof required, the State Engineer makes, or causes to be made, a full inspection of the premises in order to determine whether the construction work and the use of water conform to the act, to the rules and regulations of the State Engineer, and to the requirements of the permit.

(b) If the inspection is favorable to the permittee, the State Engineer must give notice in the manner provided in section 9, stating that if no protests are received in the office of the State Engineer prior to a specified date, a certificate of appropriation will be issued to the permittee, and that if any protest is so received, a hearing will be held upon a certain date.

(1) If no protests are received within the time allowed, and if there are no proceedings in abeyance concerning cancelation of the permit, the State Engineer must issue to the permittee a certificate of appropriation.

(2) A hearing must be held if any protest is received within the time allowed. (See section 10).

(3) Any interested party may appear at the hearing and must be heard, whether or not he has deposited a protest in the State Engineer's office.

(4) If the State Engineer determines, at the conclusion of the hearing, that the protests and objections are not well taken, and if he is in all respects satisfied that the appropriation has been properly made, he must issue to the permittee a certificate of appropriation.

(5) If the State Engineer determines at the hearing that any protest or objection is well taken, and that the permittee is not entitled to receive a certificate of appropriation, he must refuse to issue it and must declare that the permit has lapsed.

(c) If the inspection is not favorable to the permittee, the State Engineer must either --

(1) Order the permittee to show cause why the permit should not be declared to have lapsed, as provided in section 77; or

(2) Require the correction of any minor deficiencies within a reasonable time, in default of which he must order the permittee to show cause.

(d) If the permit is declared to have lapsed, in the cases stated in subsections (b) and (c) above, the procedure provided in section 77 for reinstatement or cancelation must be followed.

(1) If the permit is reinstated, which carries a postponed date of priority, further proceedings for completion of the appropriation will be in order, as provided in this section.

(2) If canceled, all rights of the permittee terminate (see section 77).

(e) Notice of the issuance of a certificate of appropriation must be given by the State Engineer, in the manner provided in section 9.

(f) Provision is made in the act for the bringing, by any interested party, of an action for judicial review of the action of the State Engineer in issuing a certificate of appropriation, within a prescribed time after the giving of notice.

(1) The court, in the final judgment in such judicial review, may affirm, modify, or reverse the action of the State Engineer.

(2) If the action of the State Engineer is modified, he must revoke the certificate of appropriation and issue in its place a new certificate of appropriation containing such terms as the court may impose, or must take such other action as the court may direct.

(3) If his action is reversed, the State Engineer must issue an order revoking the certificate of appropriation.

(4) In case the action of the State Engineer is reversed and the certificate of appropriation is revoked, all rights of the holder thereunder, and under the permit upon which it is based, terminate with the same effect and finality as provided in section 77 with respect to the cancellation of a permit to appropriate water, and the water to which the certificate of appropriation has attached again becomes unappropriated water as provided in that section. Notice must be given in the manner so provided.

(g) The issuance of a certificate of appropriation is incontestable --

(1) After the expiration of the period within which an action may be brought for judicial review, unless within such time an action has been so brought; or

(2) Upon and after the final judgment in such statutory judicial review, in case the action of the State Engineer is thereby affirmed.

(h) The date of priority of a certificate of appropriation, and of the appropriative right which it represents, is the date of priority of the permit upon which it is based.

(1) This is the date of application for the permit, provided all steps required in making the appropriation have been properly followed (see sections 24 and 64).

(2) Otherwise, it is the postponed date of priority of the permit (see sections 24, 64, and 77).

80. Certificate of appropriation -- Contents. The certificate of appropriation must describe the particular appropriation in detail, and must certify that the holder has completed the appropriation of water to the extent so described.

(a) The description must include all matters that are necessary to a complete understanding of the nature, extent, and priority of the completed appropriation.

(b) Without limiting the generality of subsection (a), the description must include:

(1) Name and postoffice address of the appropriator.

(2) Name of the water supply.

(3) Point of diversion (or pumping) of water.

(4) Date of priority.

(5) Extent of the right, including quantity and period of diversion, storage, and use of water.

(6) Purpose of use of the water.

(7) Place of use of the water, which, in the case of irrigation, must include the legal subdivisions of the land to which the water right is appurtenant; and the certificate of appropriation must state that the appropriative right is appurtenant to the lands so described (see section 35).

(c) In no event may a certificate of appropriation describe or be deemed to convey any rights greater than those which were described in the permit to make the appropriation.

(d) The State Engineer must certify that the holder has completed an appropriation of water to the extent described in the certificate of appropriation, and that he is entitled to divert and use the water to such extent.

(e) Each certificate of appropriation of ground water must contain the express conditions required in case of a permit, relating to maintenance of the ground-water level, as set out in section 75, subsection (c).

(f) The certificate of appropriation must include a statement that the exercise of the appropriative right, so described therein, is subject to all of the provisions of the act and to all of the terms and conditions expressly contained in the certificate of appropriation, and that the holder shall accept the same subject to all such provisions, terms, and conditions. (See section 37.)

(1) One who accepts a certificate of appropriation is deemed to have assented to all of its provisions and limitations.

(2) He is conclusively presumed to have accepted the certificate of appropriation, subject to all of its provisions and limitations, if the State Engineer gives notice of its issuance as required in section 79, subsection (e), and actually transmits the certificate of appropriation to the appropriator, and if, after the issuance of the certificate of appropriation has become incontestable as provided in section 79, subsection (g), the appropriator exercises the appropriative right therein described.

81. Certificate of appropriation -- Authority and effect. A certificate of appropriation is the acknowledgment by the State Engineer that the holder has completed an appropriation of water as therein described; and it is the holder's authorization from the State to exercise such appropriative right under the terms and conditions contained therein, and under the provisions of the act and the rules and regulations of the State Engineer, so long as he properly exercises the right and keeps it in good standing.

(a) The certificate of appropriation remains in effect unless and until it is revoked by court order at the conclusion of a statutory judicial review of the action of the State Engineer in issuing it, as provided in section 79; or if not so revoked, it remains in effect unless and until it is canceled or ordered canceled as a result of the abandonment or forfeiture of the appropriative right which it describes, as provided in section 54.

82. Certificate of appropriation -- Conclusiveness. A certificate of appropriation, so long as it remains in effect, is evidence of the priority, nature, and extent of the appropriative right which it describes and represents.

(a) The certificate of appropriation is prima facie evidence of the appropriative right, pending the time during which any interested party is authorized by the act to bring an action for judicial review of the action of the State Engineer in issuing it, or, if such action is brought, until final judgment in the judicial review.

(b) It is subject to cancelation by the State Engineer, as the result of his own decision or of court order, in the event that the water right which it describes has been declared to have been abandoned or forfeited, as provided in section 54.

(1) It is not subject to cancelation for any other reason or in any other manner.

(c) A certificate of appropriation, the issuance of which is no longer contestable, as provided in section 79, subsection (g), is conclusive evidence of the truth of its contents in any judicial or administrative proceeding.

(d) A certificate of appropriation, the issuance of which is no longer contestable, and which has not been canceled or ordered canceled as above provided --

(1) Is prima facie evidence of the priority, nature, and extent of the right, in determining an issue of abandonment or forfeiture of the right in any proceeding authorized by section 54.

(2) Is conclusive evidence of the priority, nature, and extent of the right, in all other cases in any judicial or administrative proceeding, and in the administration of rights to the use of the water supply to which the appropriative right attaches.

IV. Determination and Adjudication of Water Rights

83. Methods of adjudication. Water rights are adjudicated by the courts, exclusively; but in cases in which all or a large part of the rights which attach to a water supply are involved, special proceedings are provided in which administrative determinations of water rights are made by the State Engineer prior to court adjudication and as an integral part of the whole procedure; and provision is also made for referring issues to the State Engineer in water-right adjudications.

A. Special Statutory Proceeding

84. Nature of proceeding. The act provides for a special proceeding, which consists of two parts but which in legal effect is one continuous, integrated proceeding, for the determination and adjudication of all rights to the use of water of a water supply. The two parts are:

(a) First, an administrative proceeding by the State Engineer.

(1) This includes an examination of the water supply and uses of water by the State Engineer, the taking of proofs of claims of water

rights, a hearing if any controversy develops, and an order of determination of all water rights by the State Engineer.

(2) The order of determination is in no sense an adjudication of water rights, for there is nothing final about it; but it does provide a systematic, competent basis for an equitable adjudication.

(b) Second, a judicial proceeding in a trial court in which the State Engineer's order of determination is required to be filed immediately upon its issuance, with the same effect as the filing of a complaint in a civil action, and which results in a final adjudication of all of the water rights involved.

(1) Issues are joined upon the filing of exceptions by interested parties.

(2) The exceptions must be heard and decided by the court, and any testimony relevant to the proposed adjudication may be introduced and controverted; all under the usual procedure applicable to the conduct of civil actions.

(3) The judgment of the court results either in affirmation or in modification of the State Engineer's order of determination, subject to rehearing and appeal as in other cases.

(4) This judicial proceeding is intended to accord to every water-right claimant or other interested party his day in court, and to safeguard the constitutional rights of all concerned.

(5) The result of the proceeding is a final decree, issued by a court of competent jurisdiction, which adjudicates the relative rights of all claimants to the use of water of the water supply.

(c) The purposes of this special proceeding are:

(1) To adjust, and settle, the relative rights of all claimants in one comprehensive proceeding in which each claim can be and must be considered with reference to every other claim.

(2) To inject the viewpoint of the public into the settlement of water controversies.

(3) To make available to the adjustment of water rights the valuable facilities, resources, and experience of the State Engineer's organization.

(4) To provide a basis of adjudication of water rights more nearly impartial, and more conducive to the public welfare, than might be attained if only the personal interests of the private litigants were presented to the court.

85. Initiation of proceeding. The State Engineer, on his own motion, may initiate proceedings for the determination of the relative rights of claimants to the use of the waters of either a water supply or a common water

supply; and he must do so upon receipt of a petition signed by one or more of such claimants; provided, in either case, that he finds that the public interest will be served by initiating such proceedings at such time.

(a) Notice must be given, in the manner provided in section 9, to the effect that --

(1) An examination of the water supply, preparatory to determining and adjudicating the relative claims of rights to the use of the water, will be commenced upon a certain date.

(2) Upon the conclusion of the examination, all claimants will be required to submit proof of their claims.

86. Investigation by State Engineer. At the time set in the notice, the State Engineer will begin an examination of the physical features involved, of the uses that are being made of the water, and of all of the basic hydrographic and hydrologic data and other information necessary to a proper determination of the water rights.

(a) The State Engineer may make any studies, surveys, and investigations that he deems necessary.

(b) The examination will include, among other things --

(1) Characteristics of the water supply.

(2) Character, capacity, and location of works installed for the diversion, conveyance, storage, and utilization of the water.

(3) Character of irrigation agriculture.

(4) Character, location, and extent of both irrigated and non-irrigated irrigable lands.

(5) Character of uses of water other than agricultural, and location of places of use.

(c) The results will be prepared in the form of a report, one copy of which will be filed for record in the office of the State Engineer and will constitute the official record of the investigation.

(1) The report will contain a detailed statement of the findings, together with both general and detailed maps on scales of such range as the State Engineer may adopt in his rules and regulations for the determination of water rights (see section 7, subsection (g)).

87. Proofs of claims and hearings of controversies. Upon the conclusion of the investigation and preparation of the report, the State Engineer will require the filing of proofs by all claimants of rights of use attaching to the water supply, will receive notices of contests, and will hear and decide all controversies duly joined.

(a) Notice must be given, in the manner provided in section 9, to the effect that the examination has been completed, and that every one who claims a right to the use of water of the water supply must submit proof of his claim to the State Engineer, at a designated place, by a prescribed date.

(1) A form for making proof, described in subsection (b) below, must be mailed with the notice to each party known to the State Engineer who claims a right to the use of water of the water supply.

(b) Each statement of proof so submitted must be verified by affidavit; and it must include all matters that will show the nature, extent, and priority of the right which is claimed, the law under which it is claimed, and the fact that the right was acquired in compliance with law.

(1) The proof must include all of the items provided in section 80, subsection (b), for inclusion in a certificate of appropriation.

(2) It must also include, among such other things as the State Engineer may require, (a) the date of initiation of the right, if different from the date of priority; (b) description of physical works; (c) dates of beginning and completion of original construction and enlargements or extensions; (d) capacity of system, both original and as enlarged; (e) date of first use of the water, and if for irrigation, area and location of land irrigated the first year and in each subsequent year in which the acreage was increased; (f) dates of proposed irrigation and location of lands yet to be irrigated under the claimed right; (g) character of crops; (h) character of soil; and (i) description of any extant permit, certificate of appropriation, claim of a water right other than appropriative, other claim on file in the office of the State Engineer (see section 58), or court decree, which evidences the claimed right of use.

(c) The State Engineer, upon good cause shown, may extend the time within which proofs may be submitted.

(d) The State Engineer must examine all proofs, and must compare them with the records in his office relating to water rights attaching to the water supply in question and with the report of his investigation of the water supply; and he must ascertain whether --

(1) Any proof so submitted is at variance with the official record in his office of that particular water right or claim, or with the report of his investigation; and whether

(2) The official records of his office, including the report of his investigation, indicate the existence of any water right or claim attaching to the water supply, proof of which has not been submitted.

(3) In the former case, he must return the proof to the claimant, with note of the apparent discrepancies, allowing the claimant a reasonable time within which to resubmit proof.

(4) In the latter case, he must notify the claimant of the fact, allowing him a reasonable time within which to submit proof.

(e) The State Engineer must prepare and have printed an abstract of all proofs that are finally submitted, and of all water rights or claims of record in his office of which proof has not been submitted.

(f) The State Engineer must then give notice of a time and place at which any interested party may inspect the report of his investigation of the water supply, all proofs submitted, and all other records existing in connection with the proposed determination; and the notice must fix a further time within which any interested party may submit to the State Engineer, at a designated place, notice of the contest of any claim or right listed in the abstract.

(1) Notice must be given in the manner provided in section 9.

(2) In addition, a copy of the abstract must be mailed to each party who has submitted proof of claim, and to the holder of each water right or claim of record, listed in the abstract, who has not made proof.

(g) The notice of contest submitted by an interested party must state with reasonable certainty the grounds of the proposed contest, and must be verified by affidavit.

(h) A hearing must be held if --

(1) Proper notice of the contest of any claim is received within the time allowed; or

(2) Any proof, as finally submitted, is considered by the State Engineer to be at variance with the official record in his office relating to such water right or claim or with the report of his investigation; or

(3) The abstract contains any water right or claim of which proof has not been received.

(i) Notice of the hearing must be given in the manner provided in section 9; and in addition, --

(1) Every party whose claim is proposed to be contested, and every party who has submitted a notice of contest, must be notified by registered mail; the former to be apprised of the nature and grounds of the proposed contest.

(2) Any party whose proof is at variance with the records or report (see subsection (h) (2), above), unless a notice of contest against such claim has been received, must be ordered, by registered mail, to appear and show cause why his claim should not be modified by reason of the discrepancies.

(3) Any party who has failed to submit proof (see subsection (h) (3), above), unless a notice of contest against his right or claim has been received, must be ordered, by registered mail, to appear and show cause why his right or claim should not be determined in accordance with the record in the office of the State Engineer, subject to the raising of objections against it at the hearing.

(j) The hearing will be held as indicated in section 10; provided that --

(1) A proper cause for determination of a controversy at the hearing is constituted by (a) the proof submitted by any party whose claim is proposed to be contested and the verified notice of contest of such claim; or (b) the proof submitted by any party which appears to be at variance with the record of that particular water right or claim, as shown by the official records in the office of the State Engineer or by the report of his investigation, and the order of the State Engineer to show cause; or (c) the official record of the water right or claim of any party who has not submitted proof, whether such water right or claim is evidenced by a filing in the office of the State Engineer as required by section 58, or by a court decree, or by an application, permit, or certificate of appropriation, or indicated by the report of the investigation, and the State Engineer's order to show cause.

(2) In each of such cases a controversy must be deemed to have been joined.

(3) Any interested party may appear and must be heard with reference to any controversy so joined.

(4) Only such controversies may be considered at the hearing; and no objection may be raised, by the State Engineer or by any party, to any claim listed in the abstract over which a controversy has not been duly joined as herein provided.

(5) The burden of establishing a claim that is in controversy is upon the claimant; provided, that if a party has not submitted proof and does not appear pursuant to the State Engineer's order to show cause, the claim must be determined in accordance with the official record thereof and with the report of the investigation, in case no objection is made at the hearing, or may be modified in the light of objections that are raised at the hearing.

(k) At any time prior to the conclusion of the hearing, any party who claims a right to the use of water of the water supply not listed in the abstract, and who makes a satisfactory showing that he has not received notice and has had no actual knowledge of the pendency of the proposed determination, may intervene upon petition to the State Engineer; provided, that notice of the petition must be given as provided in section 9 and an opportunity afforded for making contest, and that any controversy duly joined over the claim must be heard as herein provided.

(1) At the hearing, the State Engineer must decide all of the controversies so joined; and in his discretion, he may grant a rehearing of any controversy so decided.

(1) The usual procedure for judicial review of an action by the State Engineer is not applicable to the results of this hearing.

(2) Judicial review will be provided in the court adjudication provided for in section 90, and in only that manner.

88. Determination by State Engineer. Upon the conclusion of the hearing provided for in section 87, or upon the expiration of the period within which notices of contests may be received, if no such notice has been received and if no party is ordered to show cause (see section 87, subsection (i)), the State Engineer prepares an order determining the water rights which attach to the water supply.

(a) The determination will include all of the claims listed in the abstract, to wit, the claims over which no controversy has been joined, and those over which controversy has been joined and decided by the State Engineer (see section 87); and the determination of each water right must be in the full detail required in section 80 for the description of an appropriative right in a certificate of appropriation.

(b) The order of determination will be printed, and copies will be mailed to all parties whose rights are so determined and to all others who have been parties to the proceedings.

(c) The order of determination will be filed for record in the office of the State Engineer upon the date upon which copies are mailed out as provided in subsection (b) above, and such date will constitute the date of the order of determination.

(d) The act will provide for fees and for the allocation of costs of the determination and of all proceedings preliminary to it.

89. Effect of determination by State Engineer. The order of determination remains in effect from the date of the order (see section 88, subsection (c)), unless its operation is stayed by a stay bond, or unless the order of determination is modified by the court at the conclusion of the adjudication (see section 90, subsection (k), and section 91, subsection (b)).

(a) So long as the order of determination remains in effect, the water of the water supply must be divided in accordance with the rights as so determined.

(b) Operation of the order may be stayed, in whole or in part, during the pendency of the adjudication proceedings, by the filing of a stay bond.

(1) The bond will be filed in the court in which the order of determination has been filed or is about to be filed for adjudication of the water rights (see section 90.)

(2) The bond will be in such amount as the court may prescribe.

(3) The condition of the bond is such that the party who files it will pay all damages that may accrue by reason of the lack of enforcement of the order of determination.

90. Court adjudication of water rights. As soon as practicable after the date of the order of determination (see section 88, subsection (c)), the State Engineer must file with the clerk of a designated trial court the order of determination, together with (a) a complete transcript of all proceedings

preliminary to the order of determination, (b) a certified copy of the report of the State Engineer's investigation, and (c) the original of all proofs and other evidence submitted; and thereafter the adjudication of rights relating to the water supply will proceed as nearly as practicable under the procedure provided by law for the trial of a suit in equity.

(a) The trial court designated to make the adjudication will be the court which has original jurisdiction to hear and decide controversies over rights of real property in the judicial district, or other jurisdiction, in which is located the largest aggregate area of lands to which the water rights covered by the order of determination are indicated therein as appurtenant.

(b) The order of determination so filed, with its accompanying papers, has the legal effect of a complaint in a civil action.

(c) Exception may be taken, by any interested party, to the order of determination as a whole or to any part of it.

(d) The order of determination, all papers filed with it, and the exceptions taken, constitute the pleadings; but the court may allow such additional or amended pleadings as may be necessary to a proper adjudication.

(e) Any claimant of a right of use attaching to the water supply who has not received notice of any of the proceedings, and who has had no actual knowledge of their pendency, may intervene at any time within one (1) year after the order of determination is filed in the court for adjudication, upon leave of the court and upon such terms as may be equitable; and he will thereafter have all of the rights and be subject to all of the duties of those claimants who received notice.

(f) If no exceptions are filed, the court may enter a decree affirming the order of determination, or may order such further proceedings as may be deemed proper.

(g) If exceptions are filed, the court must hear and decide the issues so joined.

(h) The court must allow the introduction of any testimony, by any party, that is relevant to the proposed adjudication, and of testimony in rebuttal.

(i) The court may employ persons to make further investigations and reports.

(j) The court may refer the case back to the State Engineer for further investigation and report, or for the taking of further testimony, or for the determination of one or more of the issues.

(k) At the conclusion of the proceedings, the court may affirm or modify the order of determination of the State Engineer, subject to rehearing and to appeal by the State Engineer or any other party, and must assess the costs, as in other civil actions.

(1) The waters of the water supply must be divided among the holders of rights which attach to it, in accordance with the order of determination as so affirmed or modified, or as further modified on rehearing, or as the result of appeal, or as the result of the optional modification accorded by section 91, subsection (b).

91. Decree. The decree of the court must adjudicate the water right of every person whose right to the use of water of the water supply has been substantiated by the proceedings; and the adjudication of each such water right must be in the full detail required in section 80 for the description of an appropriative right in a certificate of appropriation.

(a) A certified copy of the decree must be filed for record in the office of the State Engineer, and also in the county records of each county in which is situated any part of the water supply or any of the lands to which any of the adjudicated rights are appurtenant.

(b) The court, in its discretion, may provide in its judgment and decree that at any time within three (3) years from the date of entry of the decree, the State Engineer or any party affected by the decree may apply to the court for a modification of the adjudged order of determination, and of the decree, insofar only as quantities of water are concerned.

92. Conclusiveness of decree. The decree, subject to the optional modification authorized in section 91, subsection (b) above, is conclusive as to the relative rights of all parties whose rights are adjudicated therein.

93. Estoppel of nonparticipants. All parties who claim rights to the use of water of the water supply, but who failed to make proof or to intervene in the administrative or judicial proceedings leading to the adjudication and whose rights were not determined or adjudicated therein, are barred and estopped from asserting rights in the water supply superior to or of earlier priority than that of any water right adjudicated in the final decree.

94. Certificate of adjudication. Upon the receipt of a certified copy of the final decree, after appeals and the right of appeal and the optional modification provided in section 91, subsection (b), have been finally disposed of, the State Engineer must issue a certificate of adjudication to each party whose right has been so adjudicated.

(a) The certificate of adjudication must describe the adjudicated water right in the same detail as is required in section 80 for the description of an appropriative right in a certificate of appropriation.

(b) A certificate of adjudication remains in effect unless or until it is canceled or ordered canceled as the result of the abandonment or forfeiture of the water right which it describes (see section 54).

(c) A certificate of adjudication, so long as it remains in effect, is --

(1) Prima facie evidence of the priority, nature, and extent of the adjudicated water right, in determining an issue of abandonment or forfeiture of the water right in any proceeding authorized by section 54.

(2) Conclusive evidence of the priority, nature, and extent of the adjudicated water right, in all other cases in any judicial or administrative proceeding, and in the administration of rights to the use of the water supply to which the adjudicated water right attaches.

B. Special Proceeding for Adjustment of Extant Decrees

95. Procedure. In any case in which rights to the use of all or substantially all portions of either a water supply or a common water supply have been adjudicated by court decree, but not in the same proceeding, the State Engineer may initiate a special proceeding for the purpose of adjusting and harmonizing all such extant court decrees.

(a) The procedure, both administrative and judicial, will follow that provided in sections 84 to 94, inclusive, insofar as may be practicable, except as follows:

(1) The investigation of the State Engineer (see section 86) may be limited to those matters that were not clearly developed in the extant decrees or in the proceedings upon which they were based.

(2) Contests of rights already adjudicated (see section 87) will be limited to controversies between holders of adjudicated rights who were not parties to the same original adjudication proceedings, and to controversies between claimants of rights acquired after the adjudication relating to that particular portion of the water supply was completed. No adjudicated right may be contested by any party to the same original proceeding, or by the claimant of any water right acquired subsequently.

(b) The final decree of the court (see section 91) will embrace all water rights that were adjudicated in the original proceedings, and all water rights acquired subsequently, and will be conclusive upon all parties named in the decree (see section 92).

(c) Certificates of adjudication must be issued by the State Engineer, as provided in section 94.

C. General Court Proceedings

96. Suspension pending special statutory adjudication. Any suit that is pending in any court for the adjudication of water rights may be suspended by the court, pending the completion of a determination and adjudication of all rights to the use of water of the water supply involved, in the special statutory proceeding provided in sections 84 to 94, inclusive, if it appears that the water rights in litigation are included in a proceeding already under way or will be included in one that is about to begin.

(a) The court in its discretion may request the State Engineer to initiate such special proceeding at the earliest practicable date, and must

make such request if so petitioned by one or more of the parties to the pending suit; and the State Engineer must conform to such request if he deems that the public welfare so requires.

(b) Or the State Engineer may represent to the court that a special statutory proceeding which includes or will include the water rights involved in the pending suit has begun or is about to begin, and may petition the court to order the suspension of the pending suit in view of those circumstances.

(c) In either of the above cases the court must order the pending suit suspended until further order; but in no event must this be done for this reason alone, unless the State Engineer has already initiated a special statutory proceeding which includes the water rights in litigation, or unless the court receives assurance from the State Engineer that such proceeding will be commenced within a reasonable time.

(d) Upon the issuance of the final decree in the special statutory proceeding, the pending suit must be dismissed.

97. Reference to State Engineer. In case suit is brought in any court of competent jurisdiction for the adjudication of water rights, and is not suspended as provided in section 96, the court may refer the case, or any or all of the issues involved, to the State Engineer as referee, or may refer the suit to the State Engineer for investigation and report upon any one or more of the physical facts involved, provided that adequate provision is made for paying the expenses of the State Engineer in so acting as referee.

(a) In such case the State Engineer may base his report as referee solely upon his own investigation, or may hold hearings and take testimony as provided in section 10.

(b) The State Engineer must prepare a preliminary report and must mail copies to all interested parties, who will be allowed to file objections with the State Engineer within a reasonable time.

(1) The State Engineer may hold hearings upon such objections, as provided in section 10, if he deems it advisable.

(c) The final report of the State Engineer will be filed with the court, with notice to all interested parties given in the manner provided by the usual court procedure.

(d) Exceptions to the report may be taken by any interested party who has made an objection to the preliminary report, or by any other party in the discretion of the court.

(e) Costs of the reference will be apportioned by the court.

(f) If the adjudication provided for in this section covers all or nearly all of the water rights which are known or believed to attach to the water supply involved in the proceedings, the court in its final decree must direct the State Engineer to issue certificates of adjudication in the manner provided in section 94.

98. Reference to State Engineer from Federal court. The State Engineer may accept a reference, as master or referee, from a Federal court, in case suit is brought in such court for the adjudication of rights to the use of water within this State or partially within this State.

(a) In so acting, the State Engineer must proceed according to the rules of practice and procedure of such Federal court, or as otherwise directed by the court.

99. Intervention by Attorney General. The Attorney General, upon being advised by the State Engineer that the public interest so requires, may intervene on behalf of the State in any suit that is pending for the adjudication of water rights and that is not suspended or referred to the State Engineer as provided in sections 96 and 97.

(a) The court must allow such intervention.

V. Administration of Water Rights and Distribution of Water

100. Control by State Engineer. The administration of all water rights within the State, and control over the distribution of water from public water supplies to those who hold rights of use, are vested in the State Engineer. (See section 7.)

(a) The State Engineer is chief of the State water administration organization; and all members of the organization perform the duties imposed by the act under the general direction and supervision of the State Engineer, who has the responsibility of seeing that all such duties are properly performed.

101. Diversion and measuring devices. Headgates, caps, valves, or other works for the control of the diversion or pumping of water from surface and ground-water supplies or for the release of water from reservoirs, and measuring devices, must be installed wherever and whenever directed by the State Engineer, under his supervision, and of design and materials approved by him.

(a) Each control device must be provided with a lock.

(b) Any party who fails to comply with the requirements of this section, within 30 days after written notice from the State Engineer, may be forbidden by the State Engineer to divert or use water until he complies, or the State Engineer may cause the installation to be made, the cost to be a lien against the lands to which the water right in question is appurtenant, and may bring action as provided in section 7, subsection (e), to foreclose the lien.

(c) The State Engineer may inspect or cause to be inspected, at any time, all control works and measuring devices, may require such corrections as are necessary, and may enforce corrections in the manner provided in subsection (b) above.

102. Water administration areas. It is the duty of the State Engineer, from time to time as the necessity therefor arises, to divided the State into water administration areas, so constituted as to secure the best protection to the holders of water rights and the most efficient and economical supervision on the part of the State.

(a) The entire State may be divided into a few main divisions conforming to watersheds or groups of watersheds, if the State Engineer finds that such overall superintendence is warranted.

(b) Or the State Engineer may create a water district covering a more localized area whenever the conditions within such area warrant the administration of water rights therein; or he may combine a system of over-all water divisions and of water districts within water divisions.

(c) Water districts may relate only to surface-water supplies or to ground-water supplies, as the case may be; but in cases in which both surface and ground-water supplies are so interrelated and interdependent as to constitute a common water supply to which both surface and ground-water rights attach, a single water district must be used for the administration of all such related water rights, or a single water district composed of convenient subdistricts may be so utilized.

(1) The intent of this subsection is that all interrelated and interdependent water rights be coordinated under one plan of administration.

(d) The State Engineer may create a special water district or sub-district upon petition of a group of water users whose water rights have been adjusted as among themselves by common agreement, to include only such water users, if he deems it advisable, provided that such administration will not interfere with the administration of other water rights which attach to the same water supply.

(1) The creation and administration of such special water administration area will be governed by a contract entered into between the State Engineer and the holders of water rights within the area.

(2) Regardless of the fact that this is a voluntary contractual arrangement, the duties of the State Engineer and of the water-right holders with respect to the proper administration of such water rights are precisely the same as those which apply to other water administration areas, and the remedies for failure of proper performance are the same as provided elsewhere in the act; provided, that payment or reimbursement of the costs of administration will be governed by the terms of the contract (see section 103, subsection (e) (4)).

(e) The boundaries of water administration areas may be changed from time to time by order of the State Engineer, as circumstances may require; or water administration areas may be consolidated or otherwise re-adjusted to conform to changed relationships among holders of water rights or to desirable changes in administrative procedure; or the administration of an area may be discontinued when the necessity for it no longer exists.

(f) Notice of the creation or alteration of each water administration area must be given as provided in section 9.

103. Water administration officials. The State Engineer appoints the necessary officials and their subordinates who are to administer water rights and distribute public waters under his general direction and supervision.

(a) The State Engineer will have such Deputy State Engineers and Assistant State Engineers as the act may provide; and if the circumstances so require, he will have an assistant specially trained in ground-water hydrology, with a suggested designation as State Ground-water Hydrologist.

(b) An official whose designation will be stated in the act, and who will have such deputies and assistants as the State Engineer may prescribe, will be in charge of the local administration of each water administration area.

(1) The suggested designation for the official in charge of a water division is "water division superintendent;" for a surface-water district, or for a water district covering both surface and ground-water supplies, "water master;" for a surface-water subdistrict, "assistant water master;" for a separate ground-water district or subdistrict, "ground-water supervisor" or "assistant ground-water supervisor," respectively; for a surface tributary or section of a stream, "stream patrolman."

(c) The qualifications, tenure, compensation, and expenses of all of the State water administration officials and assistants will be designated in the act; provided, that the State Engineer may remove, for cause, any member of the State water organization which he heads.

(1) The State Engineer may appoint the officials in charge of water administration areas, including special water administration areas, after consultation with the holders of water rights therein, if he deems it advisable; but he is not bound to follow their recommendations; and the appointment of any such official upon recommendation of the water users does not alter in any way the status of such official with respect to the control of the State Engineer over his actions, and such official is immediately responsible for the proper performance of his duties to the State Engineer and not to the water users, whether in the case of a water administration area of the usual type or one created by contract with the water users.

(d) The compensation and expenses of all water administration officials will be paid by the State, for they are all State officers.

(e) All of the cost of administering a particular water administration area, or such fraction of the cost as the legislature may designate, must be reimbursed or paid in advance to the State by the holders of water rights in the area so administered.

(1) Reimbursement or payment in advance will be in proportion to the service rendered by the State, and will be apportioned either on the basis of areas of land to which the water rights are appurtenant,

or the quantities of water to which the holders are entitled, or on such other basis as the legislature may designate in the act.

(2) Reimbursement or payment in advance will be made in the form of a special tax against the holders of the water rights and the land or other property to which their water rights are appurtenant, levied and collected by the proper county officers after the receipt of an annual budget from the State Engineer. The tax is a lien on the appurtenant land or other property, superior to all other liens except liens for general taxes, and is collected and enforced in the same manner as in case of other taxes; and in addition, no holder of a water right is entitled to divert or use water under the terms of his water right so long as the tax with respect to the administration of such water right remains delinquent.

(3) The proceeds of such tax collections will be paid into the State treasury, and will be credited to the fund out of which the costs of administering the water administration area are paid.

(4) In the case of a special water administration area created by contract for the service of water users who are under agreement with each other, as authorized in section 102, subsection (d), reimbursement or payment in advance will be made on such basis and in such manner as may be provided by the contract between the State Engineer and the water-right holders.

104. Duties of water administration officials. It is the duty of the State Engineer, and of all members of the organization which he heads, to see that the public waters are equitably divided and distributed to those who are entitled to divert and use them, in accordance with the relative rights of all; and the members of the water administration organization are vested by the act with adequate police power to carry out the provisions of the act.

(a) The water division superintendent, if a water division is created, is in charge of the water division, under the general direction of the State Engineer, and supervises the work of the water masters within his water division; and each water master or ground-water supervisor, under the general direction of the State Engineer, or under the immediate supervision of the water division superintendent if the water district lies within a water division, is in charge of the water district and supervises the work of the assistants who are in charge of subdistricts or who perform other duties in connection with the local administration of such area. (See sections 102 and 103.)

(b) The State Engineer will prescribe the specific duties of the State Ground-water Hydrologist, if such an official is provided for.

(1) Such duties will include scientific studies and investigations and advisory relations with the water administration officials who actually administer ground-water rights.

(2) It is desirable to coordinate the actual administration of ground-water rights with the administration of surface-water rights, inasmuch as rights to the use of both surface and ground waters are in many cases so closely related and interdependent; and this can be better accomplished by utilizing the services of the State Ground-water Hydrologist and his assistants in an advisory capacity, rather than by placing the State Ground-water Hydrologist in administrative control of ground-water rights and thus having two water administrators in a given area responsible through different superior officers to the State Engineer.

(c) It is the duty of the official who is in charge of each water administration area --

(1) To distribute the public waters therein in accordance with the rights of all holders of water rights, whether such water rights be evidenced by (a) certificates of adjudication or court decrees not followed by the issuance of certificates of adjudication; or (b) orders of determination of water rights in effect pending adjudication proceedings; or (c) permits and certificates of appropriation; or (d) other water rights or claims of record in the office of the State Engineer, to the extent that they can be reconciled with the foregoing; or (e) rotation, exchange, or other agreements between water-right holders which do not conflict with the proper administration of other rights in the same water supply.

(2) To enforce priorities of water rights strictly (see sections 23 and 24), except as modified by the provisions of section 105.

(3) To adjust the headgate or other means of diversion of each holder of a right to the use of water of either a surface or ground-water supply, and the controlling works of reservoirs, in order that no more water be diverted than the holder of the right is entitled to divert under the terms of his water right (see section 26).

(4) To close and lock the headgate or other means of diversion or control of water from a surface or ground-water supply, at such times as the water which might otherwise be diverted there is needed to satisfy the lawful requirements of the holders of all water rights of earlier priority.

(5) Whenever, in pursuance of the foregoing, the water administration official regulates a means of diversion or control, he must attach to the works a written notice to the effect that the works have been properly regulated and are wholly under his control. Such notice, properly dated and signed, must be deemed to be legal notice to all parties interested in or affected by such act.

105. Distribution of water in case of heavy stream losses. The mandate to the State Engineer to enforce priorities strictly (see section 104, subsection (c)), applies to cases in which the available supply of water can be distributed in quantities that are usable by and useful to the appropriators; and no appropriator is to be delivered water which, because of heavy losses in the stream bed or other natural or lawful factors, cannot reach his point of diversion in quantities that will be useful to him (see section 26).

(a) In a case in which the water at a given point in a water supply becomes greatly diminished, as the result of natural causes and of lawful diversions, and there are upstream appropriators, with priorities junior to those which attach to the water supply at such point, to whom the water would be useful under their rights, the State Engineer must distribute the water to such junior appropriators if he finds that the quantities available to the senior appropriators, if allowed to flow downstream, would be so small as to be not usable by them or useful to them.

(1) The State Engineer must determine the facts, from all available sources.

(2) His decision, if not unreasonable or arbitrary, is conclusive.

106. Restriction of ground-water withdrawals in time of water shortage. Withdrawals of ground water in ground-water administration areas must be restricted to conform to priorities of appropriative rights in time of water shortage.

(a) The State Engineer may hold a hearing at any time, on his own motion, to determine whether the water supply in a ground-water administration area is adequate for the needs of all holders of rights of record which attach to such ground-water supply; and he must do so upon petition of at least 50, or one-fourth, whichever is the lesser number, of the holders of such rights.

(1) Notice and the hearing will follow the procedure outlined in sections 9 and 10.

(b) If the finding of the State Engineer is negative, he must order that withdrawals of water be restricted to conform to priority rights during the period of shortage.

107. Arbitration outside of water administration areas. The State Engineer, if he deems it advisable, may act as arbiter in the case of water-right holders not located in any water administration area, who are unable to agree among themselves as to the division of water, upon request of such parties; and he may impose such conditions as he may deem appropriate, prerequisite to the settlement of such disputes.

108. Division of water after diversion from water supply. The State Engineer, in his discretion, may arrange for the division of water from a reservoir or distribution system, or any part thereof, after the diversion of the water from a water supply, upon petition of at least one-fourth of the water users involved; provided, that this section is not applicable to any part of the distribution of water by an irrigation district or other governmental agency or entity without the consent of its governing body or management.

(a) If the State Engineer tentatively approves the petition, he must give notice and hold a hearing, as provided in sections 9 and 10.

(b) If the State Engineer finally approves the petition as the result of a hearing, which affirmative finding only is subject to judicial review, he must proceed to arrange for the distribution of water upon such terms and conditions and by such agency as he may provide for in his decision upon the hearing; and his decision is binding upon all of the water users involved, unless found to be unreasonable or arbitrary in the course of a judicial review of the decision.

109. Police powers of water administration officials. The water administration officials are entrusted by the act with the regulation of the public water supplies of the State, to which private property rights attach by virtue of authority granted by the State law; the water officials are required to distribute the public waters only to the holders of those private property rights of use, and only according to the terms of each distinct right in relation to all other rights which attach to the same water supply; they are provided with the official records of all water rights, which are their sole guidance in dividing the available water; they are presumed to act in accordance with law; and they are vested with all of the authority to carry out their functions that the legislature can provide.

(a) The State Engineer and all members of the State water administration organization are designated as police officers for the purpose of properly enforcing the provisions of the act, and they have power to arrest any person who violates any provision of the act and to turn him over to any appropriate police officer for custody.

(1) The official who makes the arrest must immediately file complaint before the proper magistrate under the usual procedure provided by law.

(b) Any person who wilfully interferes in any way with a headgate, cap, valve, or other controlling works adjusted by a water administration official in the proper performance of his duties, or with a measuring device under his control, or who interferes with such proposed or actual regulation or control, or who diverts or uses water which has been lawfully denied him by any such official, is guilty of a misdemeanor.

(1) Possession or use of water, when so lawfully denied, is prima facie evidence of guilt.

(2) The act will prescribe penalties in case of conviction.

110. Remedies of aggrieved parties. Any party who is aggrieved at any official act of a water administration official may seek relief by appealing to the latter's superior officers and thence to the courts, or if he requires immediate injunctive relief, he may resort directly to the courts.

(a) Any person who deems himself injured or discriminated against by any official act of a water administration official may complain to the superior officer of the latter; and if not thereby satisfied, he may appeal to the next higher superior officer, if there is one, and thence to the State Engineer, or directly to the State Engineer, as the case may be; and the decision of the State Engineer is subject to judicial review.

(1) Complaints and appeals made to subordinate officials may be made without formality of any kind.

(2) A complaint made directly to the State Engineer, or an appeal taken to the State Engineer from the ruling of a subordinate, must be made on a form to be provided by the State Engineer, who must give notice and hold a hearing in the manner provided in sections 9 and 10.

(3) The rules and regulations of the State Engineer for the administration of water rights (see section 7, subsection (g)), must provide for the details of the procedure authorized by this subsection.

(4) The State Engineer may take such action as the result of the hearing as he deems proper; and any party who is aggrieved by his decision may bring an action for judicial review, as authorized by section 11, subsection (a), the procedure for such judicial review being prescribed in the act.

(b) In a case in which immediate injunctive relief against the action or threatened action of a water administration official is necessary for the proper protection of a water user, the latter may have immediate recourse to the courts by posting a heavy bond, as required in section 11, subsection (c); but in all cases that do not involve immediate injunctive relief, the remedy provided by subsection (a) above must be first pursued before resorting to the courts.

(1) In a case involving the distribution of water, injunction may be granted, either in an action for immediate injunctive relief or in an action brought for judicial review, only if it is shown that the water administrative official failed to distribute the water as required in section 104, subsection (c).